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Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1405)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Good afternoon, everybody. Welcome to meeting 110 of the Standing Committee on Industry, Science and Technology.

We are continuing our five-day, five-city road trip on the Copyright Act. So far, it has been quite interesting to get the diverse opinions that are coming through. As well, the open-mike sessions have been really well received.

We have translators here; everything being said today is being recorded, as well. We'll be able to take it back to the House, and it will be part of the official documentation.

Today we have in our first panel the Canadian Copyright Institute, Mr. William Harnum, chair. We have the International Publishers Association, Mr. Hugo Setzer, vice-president of publishing. From the University of Guelph we have Ms. Rebecca Graham, university librarian, chief librarian's office.

We really wish Lloyd was here for you.

Finally, from the Toronto Public Library we have Ms. Susan Caron, director, collections and membership services.

We're going to start. You have up to seven minutes to make your presentations, and then we'll get into rounds of questions.

Just as a reminder to our audience, once the gavel has been banged there is no picture-taking or recording allowed. That prohibition is part of our official House of Commons protocol.

We will start with the Canadian Copyright Institute.

Mr. Harnum, you have up to seven minutes.

Mr. William Harnum (Chair, Canadian Copyright Institute): Thank you very much, Mr. Ruimy.

Good afternoon. I'm pleased to appear before you today on behalf of the Canadian Copyright Institute, an association of creators, producers, publishers, and distributors of copyrighted works. Founded in 1965, the institute seeks to encourage a better understanding of the law of copyright.

Members of CCI have made representation to various levels of government on changes to copyright law and the copyright landscape in Canada, and we've participated in international discussions, including the Stockholm revision of the Berne Convention, and more recently, meetings of the World Intellectual Property Organization in Geneva.

In the interest of full disclosure, I should say that I've worked in academic publishing in Canada since 1984. I've been president of the Association of Canadian Publishers twice, and I have also served on the board of Access Copyright. Most of my volunteer work for the last decade has been in the field of copyright.

In our view, some aspects of copyright in Canada have been in a state of flux since the 2012 changes to the law. We supported some of the changes at the time, but our members were very worried about the inclusion of education as a fair-dealing purpose.

Representatives of the educational sector at the time assured parliamentarians, in meetings very much like this, that the inclusion of education as a category of fair dealing would have no effect on revenues to creators, and specifically that they would continue to pay their collective licence through Access Copyright. This, of course, did not happen.

People on both sides of the debate have argued about the extent of the damage to creators, but any reduction of revenues in creative industries, with narrow profit margins and low income for most writers and artists, is significant.

Let me repeat what John Degen, executive director of The Writers' Union, said on this matter last week. He said that fair dealing should apply when an individual student or other person goes to the library to make a few copies for his or her own use, not when that copying is carried out on an industrial or sector institutional basis.

That is what we believe is happening in educational institutions: wholesale copying, without compensation, of content as a substitution for purchasing books, including textbooks. The promulgation of arbitrary fair-dealing guidelines—10% of a work; an entire poem, play, or essay from a work; the whole chapter of a book; and so on—is not, in our view, fair. The Federal Court decision in the recent York University case upholds this position.

None of this is new. When I was in graduate school in the mid-1970s, accessing copyrighted content was difficult and inconvenient. Some of my professors diligently cleared copyright for excerpts handed out in class; some didn't bother.

With the introduction of Access Copyright agreements around 1991, the need for individual negotiation was eliminated and replaced by a negotiated collective licence. Educators told Access Copyright at the time that they didn't want to keep records of what was actually copied, so sampling and other methods of determining what was copied and whom to pay were devised and agreed upon. It was an easy, efficient, and inexpensive method of accessing content from Canadian and foreign publications.

In all the talk of billions of dollars in spending by universities and libraries on content, it's important to remember that its highest rate, the Access Copyright fee, was set at $27 per full-time student—less, as my son says, than the price of a case of beer.

About 20 years later, educational institutions decided, emboldened by the 2012 amendment extending fair dealing to education, that most of what they were copying should not be paid for at all.

We suggest that education as a category of fair dealing needs parameters either in a copyright act or regulation, or both. The parameters must provide some latitude for copying by individuals but not be so broad as to encourage wholesale copying, unless with a licence from a collective society, or alternatively, a tariff determined by the Copyright Board. That's our position on fair dealing.

Secondly, claims by the education community that tariffs established by the Copyright Board are voluntary are, in our view, absurd. The Federal Court, in the York University case, has determined that tariffs are indeed mandatory. Despite the clear ruling of the Federal Court, however, many in the educational sector are refusing to pay royalties owing under tariffs set by the Copyright Board.

Our third point today is a recommendation to extend copyright to 70 years after the death of the author, which would have been required by the trans-Pacific partnership agreement, if the U.S. had remained on board.

Countries that now protect copyright for 70 years following death include the United Kingdom and all the other members of the European Union, the United States, and Australia. Canada is out of sync with the norm. If concerns were expressed about difficulty in locating deceased rights holders, we can look to improvements in the copyright owner provision in the Copyright Act, as well as enabling an author to leave a legacy that may benefit grandchildren, as well as children, which is an additional important reason for the extension. It is now more advantageous for a Canadian author to publish first in countries outside Canada because some countries provide the 70 years of protection only on the basis of reciprocity.

We believe that these three changes are important for a thriving copyright environment, for the benefit of both creators and the public.

Thank you.

● (1410)

The Chair: Thank you very much. We're going to move to the International Publishers Association and Mr. Setzer. You have up to seven minutes.

Mr. Hugo Setzer (Vice-President, Publishing, International Publishers Association): Good afternoon. Thank you very much for the opportunity to appear before this committee. My name is Hugo Setzer. I am a publisher in Mexico City and currently vice-president of the International Publishers Association or IPA.

IPA is a federation of national, regional, and specialist publishers' associations, with 76 member organizations from 65 countries throughout the world. IPA has three Canadian members. We have the Association of Canadian Publishers, the Canadian Publishers' Council, and l'Association nationale des éditeurs de livres.

IPA has a special interest in educational publishing. Educational publishers are very good at producing and supplying quality textbooks and learning materials, and they develop a wide range of innovative new tools and content in digital, print, and blended formats. Education is a legitimate market for publishers, and the protection of their investment by copyright encourages and promotes investment in quality educational material.

Publishers are not in principle against exceptions. They have their place in a well-balanced ecosystem. For example, we fully support the Marrakesh Treaty. But when there are too many exceptions or when they are too broad, they undermine the very business model that produces high-quality educational content in the first place.

When considering educational exceptions, we think that legislators should consider broader policy objectives, notably to establish a sustainable local publishing ecosystem that supports a knowledge- and information-based economy.

Exceptions for specific, well-defined, and narrow educational purposes are part of the copyright landscape, and publishers accept that. Publishers' experience is that exceptions that are designed for a specific case, as contemplated by the Berne Convention's three-step test, work best, since all parties have a common understanding of how the exception works.

The so-called "fair dealing" exemption introduced into Canadian law in 2012, however, is much too broad. Nowhere in the industrialized world outside Canada is education in the generic sense a permitted purpose for an unremunerated fair dealing exemption, as shown by many studies.

Our concern at IPA is that Canada is now considered internationally an outlier, not only with its fair dealing exemption for education, but with its court-made law that equates fair dealing exemptions with so-called user rights, all of which has resulted in loss of income for Canadian publishers and others. Publishers report reduced or even complete withdrawal of investment in Canada's specific K-to-12 educational content.

In the IPA submission to other national copyright reviews in places all around the world, such as Australia, Ireland, Nigeria, Singapore, and South Africa, we have had to argue that Canada is a bad-case example of governments' interfering with copyright and undermining the local market. It is an unfortunate but direct consequence of the 2012 copyright law changes that Canada now sits with such countries as Venezuela, Kuwait, and China on the priority watch-list of the Special 301 Report of the United States Trade Representative.

Canada has obligations under the Berne Convention and TRIPS whereby its exceptions must pass muster under the three-step test. We are hearing arguments from noted scholars that the fair dealing for education exemption, as subsequently interpreted by the Supreme Court and by a number of educational institutions such as York University, does not need the three-step test.

A well-balanced educational publishing infrastructure includes collective licensing. We all know that copying exists, and finding a mechanism that remunerates creators and publishers fairly for income forgone when teachers and students copy material is unquestionably the best way of dealing with this activity. Students perform best when they have high-quality resources to work with. Collective licensing in the educational field is done at a very low cost per head.

● (1415)

Education is a strategic resource for all countries that want to be part of the knowledge-based economy of the future. Educational publishers and the authors they employ, many of whom are former teachers, are the professionals best placed to translate curricula into quality textbooks and learning materials. It is publishers who are keenly aware of the latest research into teaching and learning. It is publishers who will use all available and appropriate formats, and publishers' materials are specifically designed to stimulate academic success. Please help us to continue to invest in education.

Thank you very much.

The Chair: Thank you.

We're going to move right on to the University of Guelph. Ms. Graham, you have up to seven minutes.

Ms. Rebecca Graham (Chief Information Officer and Chief Librarian, Chief Librarian's Office, University of Guelph): Good afternoon, Mr. Chair and members of the committee. Thank you for the opportunity to speak with you this afternoon.

As you've just heard, my name is Rebecca Graham and I'm the university librarian at the University of Guelph. I'm joined here today by Heather Martin, our copyright officer and manager of e-learning and reserve services.

Today I would like to share with you the history of fair dealing practices at the University of Guelph. For almost 35 years we have practised effective management of copyright. In doing so, we facilitate and advocate for responsible and informed uses of copyrighted materials through compliance with the act and compliance with the many licences and contracts we negotiate with digital content publishers and providers, and engagement with Guelph faculty, students, and staff. We provide expertise and guidance on copyright and authors rights issues, as well as fair-dealing practices, so that they understand both their rights and their obligations as creators and consumers of content. We also have a commitment of staff and other resources to support copyright education and compliance.

In 1984, the University of Guelph was among the earliest Canadian institutions to implement an institutional copyright policy, one that included specific guidelines on fair dealing. Guidelines adopted at that time did not differ substantially from the fair-dealing policy in use at universities today. They specified copying from books "may not exceed ten percent of the monograph", and for periodicals, "one article in five from any one issue", no more than 10% of the whole issue.

There were dramatic shifts in our collection development strategy from the mid-1990s to 2010 as we moved away from the acquisition of individual books and journals in print to the increasingly larger-scale acquisition of digital content to the benefit of our patrons, made possible through technological advances.

During the period, the university paid for a collective licence with Access Copyright to authorize photocopying of print materials, paid transactional licences to Access Copyright for copying that exceeded what could be copied under the terms of the blanket licence, paid publishers and creators directly for the right to digitize and post course materials online, and continued to use fair dealing to authorize copying works that were excluded from Access Copyright's repertoire.

By 2010, the majority of journal and book content utilized for courses was from our subscriptions to digital publications. Given this rise in an increasingly networked world, which in turn enabled both digital publishing and new learning environments, the collective licence for reproducing print materials no longer had value.

In January 2011, the University of Guelph was one of a number of Canadian universities choosing to opt out of the Access Copyright model and choosing to manage our own copyright practices. Subsequent developments between 2012 and 2017 supported this decision, most notably the Supreme Court decision in Alberta (Education) v. Access Copyright, which affirmed that fair dealing for purposes such as private study and research extended to teachers making copies for their students.

The addition of education as a fair dealing purpose in the 2012 Copyright Modernization Act provided further clarity on the scope of fair dealing in an educational context. In 2012, the university adopted the fair dealing policy for universities developed by Universities Canada based on the Supreme Court decision.

In 2017 through 2018, the recently completed fiscal year, our acquisition budget was $8 million, with which we purchased or subscribed to international scholarly output, including substantial portions of Canadian University Press output, as well as literary works by Canadian authors. We subscribe to e-books from the Association of Canadian University Presses. We provide a digital publishing platform for a number of scholarly journals and we contribute to the national journal publishing efforts, including Érudit.

● (1420)

In that period, we also spent $100,000 on transactional licences to accompany educational materials that fall outside the limits of fair dealing. Currently, 92% of the materials we acquire are digital and the rights we negotiate provide for greater legal opportunities for the use of those materials.

Students at the university access course readings in a variety of ways. They purchase textbooks from the university bookstore. They also access materials placed on reserve in the learning management system including 54% through direct links from licensed materials, 24% open and free Internet content, 6% via transactional licences, with the remaining 16% under fair dealing.

I would like to conclude by stating that we support the retention of fair dealing, as it currently exists in the legislation. I would like to thank you again for this opportunity to speak with you today.

The Chair: Thank you very much.

Finally, we're going to move to the Toronto Public Library.

The floor is yours, Ms. Caron.

Ms. Susan Caron (Director, Collections and Membership Services, Toronto Public Library): Thank you for inviting me to address you this afternoon and for leading the review of the Copyright Act.

I am the director of collections and membership services at the Toronto Public Library, and I'm going to talk about interlibrary loans, technological protection measures, and equitable access to e-books.

Public libraries have long played a role in assisting people to undertake personal research and study. Since it is recognized that no library can be entirely self-sufficient in fulfilling this role, the Toronto Public Library is an active participant in the interlibrary loan process, in which library materials are lent to and obtained from other libraries to fill customer requests. As the largest public library in Canada, and the owner of unique materials, we welcome the opportunity to share our collections and to support the work of researchers outside Toronto. We regularly lend and provide about 4,500 books and copies of documents a year.

These services rely on the current fair dealing framework, primarily the exception for research and private study and the exception for libraries to copy material for customers. This balanced and flexible framework is critical to the future success of resource-sharing between public libraries, which extends access to library collections across Canada. Therefore, the current fair dealing provisions that support this use and exceptions for libraries should be retained unchanged.

However, as electronic materials make up more of our collections, our ability to lend those materials is often restricted by the contract provisions in our licences. This means that we cannot lend digital material to other libraries that cannot afford expensive digital resources. Contract language is complex and difficult to interpret, so librarians err on the side of caution and do not lend or copy digital material for other libraries. To be able to provide equitable service, regardless of format, we recommend amending the act to explicitly state that contract provisions cannot override fair dealing and library exceptions. This would allow us to provide interlibrary loan services in the digital age.

Second, technical protection measures, or TPMs, on materials such as e-books can prevent the library from non-infringing sharing that would otherwise be recognized as a fair dealing exception. For example, if a library customer wants to make a copy of a small portion of an e-book for private study or research, the TPM prevents this, even though it is allowed under fair dealing. Publishers see TPM as the way to protect digital books against copyright infringement and piracy. However, many researchers dispute this.

According to a 2017 study by Britain's Intellectual Property Office, 17% of e-books read by U.K. customers are illegally downloaded, and there is no reason to believe that Canadians are any different. For example, as Mr. Setzer alluded to, in its 2017 report, the International Intellectual Property Alliance kept Canada on its watch-list, stating that online infringement remains widespread in Canada.

Briefly, TPM appears to have little effect on e-book piracy. It's fairly easy to crack e-book encryption, and there are thousands of illegal sites to choose from. Publishers are spending a great deal of money on TPMs, and in the meantime, are blocking users from legitimate sharing of content. Many see TPM-free e-books as the obvious solution, and this is gaining ground in the academic world. However, we simply recommend that the act be amended to allow for non-infringing circumvention of TPMs to allow libraries to lend and customers to copy within existing exceptions, regardless of format or TPM applied.

Last, I want to speak about the challenges libraries are facing in building e-book and e-audio book collections. In 2016, Toronto and Ottawa city councils, at the request of their library boards, adopted a resolution to, "request the Department of Canadian Heritage and Industry Canada to investigate current e-book pricing practices of multinational publishers as part of any upcoming statutory review of the Copyright Act". This was also endorsed by the Federation of Canadian Municipalities.

In the last five years, the use of digital formats by Toronto Public Library customers has risen by 200%, to over 4.5 million uses in 2017. This is great news, but we, like public libraries across Canada and around the world, are dealing with multinational publishers that may charge us four to five times what consumers pay for a licence that allows customers to access one copy of an e-book. Furthermore, three out of the five multinationals require that we repurchase these licences after a set time or number of uses. This is an unsustainable licensing model, and despite repeated efforts over six years to discuss a reasonable model with publishers, there has been little movement.

● (1425)

Canadian libraries have also been unable to access the same titles as American libraries, although we share the same vendors. We have been told that this is because Canadian rights have not been negotiated, and some of these titles are Canadian.

We submit that the book importation regulations may offer a model to address the lack of availability and the excessive pricing faced by libraries in the digital era.

Thank you for the opportunity to speak.

The Chair: Thank you very much.

We're going to jump right into our questions.

Mr. Jowhari, you have seven minutes, please.

Mr. Majid Jowhari (Richmond Hill, Lib.): I welcome all the presenters. Thank you for taking the time to be here and for sharing your input with us.

I'm going to start with Ms. Graham, from the University of Guelph.

You've indicated that your university spent about $8 million in 2017 on the purchase of content. Can you give me a sense of what kind of percentage increase there has been for that expenditure from 2012 to 2017 ?

Ms. Rebecca Graham: I can tell you that from 2007-08, actually, when we spent $6 million, to the most recent year we just completed, when we spent $8 million. It's been a $2-million increase.

Mr. Majid Jowhari: Sorry. Over what period...?

Ms. Rebecca Graham: Over 10 years, it's $2 million.

Mr. Majid Jowhari: Okay. Thank you.

You indicated that 92% of the expenditure in 2017 was on digital. Can you also give me a sense of the percentage change on digital during the same time period, roughly?

Ms. Rebecca Graham: It's a different time frame.

Mr. Majid Jowhari: Okay. Over the last five years?

Ms. Rebecca Graham: What I can tell you is that we had 64% digital expenditures in 2002-03—Guelph was very early in making that move—to the 92% in 2017-18.

Mr. Majid Jowhari: Out of the 92%, what percentage is specifically Canadian content?

Ms. Rebecca Graham: That's a hard number to get at, because we have many large package deals. There's Canadian content with all of those. We have a number of e-book deals and Canadian content within many of those as well. We don't have a drill-down number.

● (1430)

Mr. Majid Jowhari: Can you quickly break down the $8 million? How much of it is going to the purchase of content? How much of it is going into building any type of digital platform that you might be investing in? How much of it is going into the administrative...? This is just purely—

Ms. Rebecca Graham: It's purely content.

Mr. Majid Jowhari: Okay. Can you give me a breakdown, plus or minus, whatever per cent is reasonable, of where that money is going? Is it going directly to the content creators, or to the publishers, or...?

Ms. Rebecca Graham: It's going to the publishers, primarily.

Mr. Majid Jowhari: Okay. Can you give me—

Ms. Rebecca Graham: Excuse me: I'm looking at my expert. Yes, it's going to the publishers.

Mr. Majid Jowhari: Can you give me a sense of which publishers? Are they a certain group of publishers or is it just broadly how many publishers...?

Ms. Rebecca Graham: We participate in licensing at the national level through the CRKN, which you heard from in Ottawa. Those would be the five major publishing entities. Those licences get paid on an annual basis, so they represent a significant portion of this.

Mr. Majid Jowhari: What would a significant portion be?

Ms. Rebecca Graham: I can only hazard a guess at this point. It's probably 50%—at least.

Mr. Majid Jowhari: Fifty per cent of the $8 million is going to five publishers.

Ms. Rebecca Graham: That's correct.

Mr. Majid Jowhari: Okay. Can you submit to the clerk those publishers that you're investing nearly 50% of that $8 million in?

Thank you.

Ms. Rebecca Graham: In terms of the names?

Mr. Majid Jowhari: Yes.

Ms. Rebecca Graham: They are Springer, Wiley, Elsevier, Taylor & Francis.... I'll have to figure out what the fifth one is.

Mr. Majid Jowhari: Okay. No problem.

Can you give me some ideas around what the other $4 million is being spent on? Fifty per cent is going to the publishers. The other 50%...?

Ms. Rebecca Graham: Yes. It goes to resources like JSTOR, online scientific resources that are more index in nature and provide access to resources, as well as to print materials: books, a very limited number of print journals anymore, and electronic books, which we typically purchase packages for.

Mr. Majid Jowhari: At some later point, could you submit the breakdown to us?

Ms. Rebecca Graham: Sure.

Mr. Majid Jowhari: We're hearing 92% digital over and over again. One of the things that we're trying to do is to get an understanding of the investment, where it's going, and how much of it is actually going back into the Canadian content creators, because we also hear from Canadian content creators that their revenue is going down. I see university expenditures going up, with most of it, over 50% of it, going to the publishers, and to certain groups of publishers, yet the revenue of the content creators is going down. We are trying to deal with that dilemma.

Ms. Rebecca Graham: I think this has been mentioned in a couple of the other presentations that have taken place, but I certainly would pose the question. As we see a drop in the number of students pursuing arts and humanities degrees, certainly at our institution, we will be purchasing less content that flows out of the Canadian creative literary market.

Mr. Majid Jowhari: That's a very interesting comment, because we also heard that the expenditure on arts and literature is going down, whereas the investment by universities in scientific research and science-based content material is going up. Do you see the same trend?

Ms. Rebecca Graham: That trend was in place long before the fair-dealing changes. That's our market reality: scientific publishing in particular has increased annually, well beyond the CPI. If you look at the revenue reports from the publishers I mentioned, you'll recognize where a lot of that money has gone.

Mr. Majid Jowhari: Okay. So if we look at the revenue of the publishers....

Mr. Chair, how much time do I have?

The Chair: You have 30 seconds.

Mr. Majid Jowhari: I'll yield that to the chair.

The Chair: Thanks. I will take your 30 seconds and put them in my pocket.

Mr. Jeneroux, you have seven minutes.

● (1435)

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, everyone, for being here today.

We've heard the opening comments by Mr. Harnum, who stated that there was an agreement in place initially, as well as the comments that were made previously in committee with regard to fair dealing and what that meant. Then we heard Ms. Graham's comments about how they opted out of the Access Copyright agreement.

I'm trying to figure this out. From where the legislation came into place in 2012 to where we are now, Ms. Graham, what precipitated your decision to move out of the agreement?

Ms. Rebecca Graham: I'm going to ask my colleague Heather Martin to speak to that, because I wasn't at the university when that decision was made.

Ms. Heather Martin (Copyright Officer and Manager, E-Learning and Reserve Services, University of Guelph): I would say that a number of factors caused us to decide to opt out. It really was precipitated by the Access Copyright agreement that we had, which was coming to an end, and Access Copyright's decision to file a tariff with the Copyright Board, which was a change in structure around how it was going to be handled.

Before that happened, we were already seeing, as Rebecca has mentioned, a shift to digital, which meant that we were purchasing our content through digital platforms that were giving us the right to do the same things with that content that we were paying for through the Access Copyright licence. That was what precipitated us to change.

In the print world, it made sense to have a copyright licence with Access Copyright, because we were making photocopies to hand out in class and to share with students, but once we accessed that content through digital platforms, where we're paying up front for the right to make multiple copies to hand out in class or for students to access through the learning management system, we would effectively have been paying twice.

Mr. Matt Jeneroux: I do want to come back to some of the other comments you made, but perhaps I'll give Mr. Harnum an opportunity for a rebuttal to that statement, if he'd like.

Mr. William Harnum: Well, it's hard to rebut, because of course we don't have numbers on the table. The fact is, the number we're aware of is that last year alone in Canada over 600 million paper copies were made of the content of Canadian publishers and other publishers. All the publishers in the association that I most represent, or that I most know at the association—Canadian publishers—have seen their revenue from Access Copyright, from licensing, decline to, in many cases, almost zero.

In the case of creators and authors, these are not people who have bundles of electronic content that are sold through CRKN, JSTOR, or others of the people who have been mentioned today. These are individuals who are writing books. They were used to getting perhaps $600 to $700 per year from their Access Copyright royalties, and they're now getting $90. That's the direct result of the extension of fair dealing.

It's certainly true that for individual publishers who are used to selling class sets, for example, of plays or volumes of poetry to universities across the country, we see that eliminated completely in favour of prepared and made anthologies of print materials that are sold in university bookstores as course packs, where you take a chapter from this book, a chapter from that book, and a chapter from another book, and put them all together. What have you got? You have 10 chapters in a book, you slap a sticker on it, and you sell it. No creator gets a penny from that work.

There's been a kind of red herring set up by a number of people who are talking about this issue, which is that, well, there's so much digital that there's no print anymore. The fact is that digital, in the market for which I'm talking mostly—individual publishers in Canada—still represents less than 15% of the market. Eighty-five per cent of our market is still print. We're losing almost all the university market for.... It used to be.... It was never a huge market and never a huge amount of money, but it could be the difference between profitability and non-profitability. That's the reality.

● (1440)

Mr. Matt Jeneroux: Am I correct in saying the trend is going to more digital, though? You're saying 15%, but—

Mr. William Harnum: No. The trend is flat.

Mr. Matt Jeneroux: The trend for going digital?

Mr. William Harnum: The trend for going digital in the area that I know, certainly in my business, which is small scholarly publishers and the small university press and others, is definitely flat. We're not seeing an increase. Certainly, other people who have more experience in trade publishing than I do now can I think affirm that: we're looking at between 15% and 20%. That's been pretty much stable for the last several years, I would say.

Mr. Matt Jeneroux: Mr. Setzer, you're nodding your head. You would agree?

A voice: It's not the experience in the—

Mr. Matt Jeneroux: I'm sorry. We'll go with Mr. Setzer first.

Mr. Hugo Setzer: Yes, indeed. That's our experience internationally as well. Sales of digital products skyrocketed several years ago and have remained rather constant, between 15% and 25% or something like that, depending, of course, on the type of book and so on. Yes, we agree with that.

Mr. Matt Jeneroux: Okay. I don't have too much time left, so I won't go into too much else.

On notice and notice versus notice and takedown, you didn't hit on it in any of your comments. Obviously, Canada has notice and notice. Other jurisdictions have notice and takedown. I'm curious as to what your organization advocates for.

Mr. Hugo Setzer: That's something I don't have an answer to. We know that there are different systems throughout the world. I'm not sure if we do have a position on that. I could—

Mr. Matt Jeneroux: I was just curious.

Mr. Hugo Setzer: —investigate and send you an answer afterwards.

Mr. Matt Jeneroux: We've effectively eaten up 45 seconds. That's perfect. Thanks.

The Chair: Thanks. You're not giving me any time?

We're going to move to you, Mr. Masse, for seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thanks to all of you for being here today.

I'll start with you, Mr. Harnum. On the Copyright Board and its current status, is it of interest to reform it, to improve the speed and the enforcement of decisions?

Maybe we'll go across the panel. How do you think the Copyright Board is—or is not—working at this point in time?

Mr. William Harnum: The key issue, of course, is to make the tariff mandatory. That's the first issue for reform. In the document we submitted a few months ago on reform of the Copyright Board, that was one of our key positions. Another important position, of course, is that the penalties are too low. At the present time, the penalties for educational institutions for infringement I think are limited to the amount of the infringement. By that, I mean the cost of the infringement. I think it should be much higher.

If I may, I'll ask my colleague Marian to add her response to that.

Ms. Marian Hebb (Vice-Chair, Canadian Copyright Institute): One of the problems is that the Copyright Board doesn't have enough resources to do things quickly, and with the tariffs, for example, one is deciding on what those royalties should be several years after the licence would expire, the tariff had expired, so it's very difficult for school boards to administer and plan. It's completely impossible for the collective to distribute things. You don't know how it's going to turn out. There are terrible problems with the resources of the Copyright Board.

As Bill has said, the fact that it's uncertain that the tariff is mandatory creates a level of uncertainty as well. If organizations can opt out, then who's going to pay if they can opt out?

If I could add something related—

Mr. Brian Masse: No, I have to go across the board here.

I'll come back to you in a few minutes, but I only have seven minutes and I need to get my other witnesses in. I apologize

Ms. Marian Hebb: I'm sorry.

Mr. Brian Masse: Don't be sorry, I need to move across here. I'll try to get back to you, though.

Ms. Caron.

Ms. Susan Caron: I have very little experience with the Copyright Board.

I do know that the general feeling, though, is that it is underresourced and needs to move more quickly.

Mr. Hugo Setzer: I also don't have the numbers or the information specifically to the Copyright Board. I wouldn't have an answer to that.

Ms. Heather Martin: I would agree that the length of time the Copyright Board takes to make decisions has been problematic, and even more problematic is the the fact that payments are retroactive. The post-secondary sector has a tariff that extends back to 2011. When you talk about paying retroactive amounts, that's phenomenal. It's not only the uncertainty, but the amount of money that's sometimes involved in paying a retroactive tariff places an unnecessary burden on institutions.

In terms of the "mandatoriness" of the tariff—if that's a word, and I don't know if it is—I think we have a concern when it comes to Access Copyright and literary collectives generally, because they're not the exclusive rights holders. They own some rights, but there are also publishers and creators who own rights to content, and there are other people who licence the same content that Access Copyright does.

Making the tariff mandatory effectively takes the choice away from an educational institution like the University of Guelph in terms of where we want to purchase those rights from. If we want to be able to negotiate with someone and get more favourable rights than we can get under the tariff, it's a more responsible way for us to spend the public funds that we're given for that purpose if we can do that.

We would definitely be opposed to a tariff being mandatory.

● (1445)

Mr. Brian Masse: Ms Hebb, you have time now if you want to add something.

Ms. Marian Hebb: It's just to say that the price that Access Copyright is offering a world repertoire for I think is unbeatable.

It is true that some high-end publishers are charging very high fees, and that kind of puts things out of skew, but you can get practically everything from Access Copyright. It's on an exclusion basis, so everything that isn't listed as excluded is there. You have almost everything.

Ms. Heather Martin: There are significant publishers that are excluded from an academic standpoint as well. We have some already. Even when we had an Access Copyright licence, we had to obtain transactional licences outside of it, because there were publishers that were excluded.

Mr. Brian Masse: There seems to be at least unanimity that the Copyright Board is not working well enough for Canadians. I know that much from my knowledge of this panel and others. That's not to be a complainer of it—you can get into a whole debate—but there seems to be at least consensus that this is not a functioning environment at the moment to benefit everyone involved.

With regard to the purchasing of materials internationally—Guelph University would perhaps be the best to respond, but anyone else can chime in—what has been the trend? Is that increasing now that we have some major players that are international bodies basically reducing the sources you can get from, in terms of bundling and so forth? What type of purchasing is there? Has that shifted to be more international over the last number of years?

Ms. Heather Martin: I think when we talk about scientific research or research generally—academic research—it has always been international. If a faculty member wants to get his or her research published in the most reputable journal in the field, if that happens to be a European journal or a U.S. journal, that's where they get it published and that's the information that everyone else in that field wants to read.

I don't think the shift to international, in terms of content, has been significant. It's significantly different than it was. I think it is the platforms through which we're buying it. There's been like a market consolidation. We're buying it from these five big publishers that dominate all of these highly reputed academic journals across the world, and they sell them as packages to us.

Mr. Brian Masse: So, just inherently, there's less competition—

Ms. Heather Martin: Yes.

Mr. Brian Masse: —from that situation. I guess the issue is not necessarily that the literature and the materials themselves have differed from...but the mere fact is that you have consolidation of the market and less competition from that consolidation.

Ms. Heather Martin: Yes.

Mr. Brian Masse: It's similar to gas pricing.

The Chair: Thank you.

With that, we will pass on to Ms. Ng.

You have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you, everybody, for joining us today on this important topic and for all of your views on it. It's really important.

At the end of the day, we're going to hear a lot from many people, and we hope that what we'll be able to do is put forward some recommendations as a committee on what we've learned.

A couple of you touched on what we should be thinking about.

Mr. Setzer, you were talking about the need for a narrowing of the educational provision. What, in your view, would that look like, for example? Could you maybe expand on that a little bit?

● (1450)

Mr. Hugo Setzer: Yes, of course.

Perhaps what I was mentioning—and we have seen it in other studies by other people, like a study by Professor Daniel Seng, who did the study for the World Intellectual Property Organization—is that it's hard to find in other countries a very broad exception just for education. Usually, they should be narrowed down or limited to comply with the three-step test of the Berne Convention: that it has to be a special case, that it "does not conflict with a normal exploitation of the work", and that it "does not unreasonably prejudice the legitimate interests" of the rights owners.

I think it must be very clear what an exception for education means. For example, I was discussing this afternoon that if a student wants to make a copy for himself—as happens in many countries—he can do so, but students should not be allowed to make 30 copies for all of their colleagues in the class.

Ms. Mary Ng: Can I just pause there?

On that point, Ms. Martin and Ms. Graham, does that happen right now? We've certainly heard from post-secondary institutions that, overall, say they have a set of copyright policies that help guide their professors as well as their students. I know you'll speak for the University of Guelph, but in general, does that happen?

Ms. Rebecca Graham: Certainly not in our experience. We don't have a mechanism for monitoring, but I think that because we have had a set of practices in place for so long—there's a lot of communication that happens with new faculty who come to campus; there's engagement with students; and there are notices on copiers and scanners across the campus—our sense is that people understand what their responsibilities and rights are.

Ms. Mary Ng: To pick up a bit on what Mr. Setzer said, and on what Mr. Harnum said as well, when there is an ability for professors or students to use up to 10%—in the example, you gave around 10% of various course materials—then I suppose that within the realms of the legislation, that is in compliance of copyright. Do you not think so?

Mr. William Harnum: Can I comment?

The 10% or one chapter is something that was made up by the universities. It does not exist in legislation. This is important to understand.

Ms. Marian Hebb: For 20 years, what was allowed to be copied under an Access Copyright licence was up to 10%. They did that, they paid quite happily, and they were very happy to have permission to be able to do that. Then, suddenly, the 10% that was being licensed became what they considered to be, arbitrarily, fair dealing.

Ms. Heather Martin: Ms. Ng, can I say something?

Ms. Mary Ng: Please do. The whole purpose of this is to help us understand.

Ms. Heather Martin: We had 10% in our guidelines in 1984. When we implemented the fair dealing guidelines at the University of Guelph in 1984, 10% was the amount. It was, I believe, based on U.S. law on fair use in the U.S., which actually specifically allows for multiple copies to be made for teaching purposes. So, our fair dealing guidelines back then were based on what we believed to be fair practice in the sector at that time. They were not invented by Access Copyright. They existed before then.

Ms. Mary Ng: I'm going to try to get a quick response from everyone at the table, from each of your standpoints.

We want to look at a set of recommendations. What would be the one solution-based thing that you think we should be looking at here as we look at the act?

● (1455)

Mr. William Harnum: I think that it's finding a way, as I said in my document, to allow for fair dealing for individuals who want to copy, in an immediate way, two or three or four pages from a document for use for private study, and requiring that anything higher than that require a licence, if a licence is available. I think this is the law in the U.K., that fair dealing for education is allowed. However, if a licence like a collective licence is available, that licence must be used. That, to me, would be a good solution to the way it is now.

Right now what we're having is hundreds of million of copies being made without any compensation going to the authors or the publishers.

Ms. Mary Ng: I'm going to move along just in the interest of time.

Ms. Caron.

Ms. Susan Caron: We have an Access Copyright licence. For public libraries, that is sufficient in terms of the kind of copying that our customers do.

The one thing I would like to see implemented is that the contract language for our digital products is not allowed to override fair dealing.

Mr. Hugo Setzer: I think it's not just the amount of what can be reproduced from a certain work—if it's 10% or 8%—the most important part is how many copies you are making. If you're making a copy for your own personal use, that's accepted in many countries.

However, what I have heard—and I'm not so familiar with the situation in Canada—from Canadian publishers is that some universities are somewhat taking this expression of educational exception in the law to make copies for all their students from one chapter from one book and one chapter of another. Perhaps having one chapter is not too much, but having one chapter from 12 different books and then distributing that to all their students is definitely hurting the business.

The Chair: Very briefly, please.

Ms. Heather Martin: We had a Supreme Court ruling in 2012 that said with the copies that teachers make on behalf of their students, the purpose to be considered is the purpose of the student. It's not the teacher who needs the copies, it's the student.

When you talk about fair dealing and that it's okay for a student to make a copy, those copies being made by instructors are for the benefit of their students. I believe that fair dealing allows those copies to be made on behalf of students.

The Chair: Thank you very much.

We're going to move to Mr. Lloyd.

You have five minutes, please.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, Mr. Chair.

Mr. Setzer, I'd like to get your comment on something that Ms. Graham stated earlier, that the decline in print sales and the rise of digital content made paying for Access Copyright obsolete.

Does Access Copyright not also provide digital content, and do you believe that the rise in digital content is responsible for universities cutting off Access Copyright?

Mr. Hugo Setzer: I couldn't speak directly for Access Copyright, but most of collective management organizations throughout the world can also licence digital content.

What we are trying to do as publishers, together with authors, is to develop these licensing schemes with collective management organizations to make it easier for users to get the licences.

Mr. Dane Lloyd: With regard to these JSTOR and other digital platforms, are they distinct from the content that is offered by groups like Access Copyright and yourself, or are they duplicative?

Mr. Hugo Setzer: I'm not familiar with this platform, but—

Mr. Dane Lloyd: For example, we have academic journals that universities pay for, and it's a broad variety of journal articles and things like that.

Are these also held by Access Copyright, or are they distinct? They hold some things; Access Copyright holds other things.

Mr. Hugo Setzer: I think there is an important difference with academic scientific journals, for example, which were mentioned a while ago. They are published by the main international publishers worldwide, which do a lot of investment into publishing those journals That's one part. They tend to offer the licences directly, as far as I know.

Then there are things being licensed, for example, by Access Copyright, which are most of the textbooks and other learning materials being used in schools and universities.

● (1500)

Mr. Dane Lloyd: Would you say that in these textbooks versus in the digital stuff there is a lot of duplication or are they distinct materials?

Mr. Hugo Setzer: They're different materials.

Mr. Dane Lloyd: Okay. This final one is a request to the International Publishers, because you do have a unique position which, I think, can inform this committee. Would your organization be willing to provide a breakdown in terms of spending by countries like Canada that have public universities, so, for example, United Kingdom and France, on what their universities spend on copyright as compared to what Canada spends? Would you be able to provide that information, not today but through a submission?

Mr. Hugo Setzer: I'm not sure whether we have that information. If we have it, we'll be glad to do so. So it's the spending by universities in different countries?

Mr. Dane Lloyd: Yes.

Mr. Hugo Setzer: I'm not sure if we have that information, but I'll be glad to provide it if we have it.

Mr. Dane Lloyd: Thank you.

My next set of questions is for Mr. Harnum.

Throughout our hearings, we've had multiple representatives from library groups request TPM circumvention measures in cases where it is covered by fair dealing, and also for the right to override contracts in the same cases. However, we haven't really heard anything from the publisher side saying they disagree with that. Could you comment on that?

Mr. William Harnum: I don't know. Certainly none of my members use TPMs, so I'll turn that over to Ms. Hebb. She may help you.

Ms. Marian Hebb: I think that's an overstated case. It isn't that important to a lot of Canadian publishers, and as long as there are licences in place, it shouldn't be an issue.

Mr. Dane Lloyd: Thank you. It's enlightening for me to know that among publishers, TPMs are not really widely used.

I'll ask the library.

Mr. William Harnum: We'd use it if we knew how.

Mr. Dane Lloyd: I would ask the libraries, in terms of TPM circumvention, whose TPMs they are trying to circumvent.

Ms. Susan Caron: For us it's really e-books and it could be e-audiobooks. If we have, for example, a customer who wants to use a small portion of an e-book the same way they would use a portion of a printed book for personal research or study, they can't do it.

We have a program called Poetry Saved our Lives in the library, in which the participants take found poetry and turn it into performances. They often use small portions of books, but obviously one actually came and asked about an e-book and we can't do anything about it.

One of the things I should say about it not being an issue for Canadian publishers as much as for trade publications is that there are very few Canadian e-books available to libraries except through the big five multinationals. There are very few Canadian e-audiobooks, and that is one of our main issues. We want to buy this material. In the case of one multinational, they are not selling their e-audiobooks to libraries. They are selling them, instead, through paid subscriptions like Audible or Kobo.

I should note that Prime Minister Trudeau's book is available only as an audiobook through Audible. Public libraries in Canada cannot buy Prime Minister Trudeau's book.

A voice: Good.

Another voice: I'm not hearing objections.

The Chair: On that note, thank you very much. On the friendly side, we're going to move to Mr. Sheehan.

You have five minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): We'll fix that right away.

First of all, thank you very much to all our presenters. It's great to take the proverbial show on the road. It allows us to hear from particular regions of the country that perhaps we wouldn't hear from or hear from them in a different way. It's always good to have a face to face and this sort of round table discussion, because we can pick up on a lot of things that we would sometimes miss in other ways.

I'm going to begin with Susan from the Toronto Public Library.

The public library started out using and conceived of the Kanopy document, the one that is provided free to your membership. From what I understand, you're basically increasing your capacity to engage in digital lending for written, for videos, and for other things.

Is the Copyright Act as it is sufficiently flexible to accommodate your practices and what you're thinking about for the future for your library?

● (1505)

Ms. Susan Caron: As I said, we have the Access Copyright licence, which is certainly sufficient, I would say, for most public libraries. If it's sufficient for us, given our size, I would say it's sufficient for most public libraries.

Unlike academic publishing, we're seeing a huge increase and spending more and more money every year on e-books and e-audiobooks, and those are things our public is demanding. We're certainly seeing a growth, both in downloadable and streaming. Videos are also another big area. Print is flat. The reason we're able to continue to purchase the amount of print we do is because DVDs are falling rapidly, so we're able to shift our funds into e-books and e-audiobooks. For us, it's an ever-growing market. It goes up 20% to 30% year after year after year. E-audiobooks especially are in a huge period of growth now, and it's the same for publishers: it's the biggest format growth that they're dealing with right now.

Mr. Terry Sheehan: Are you concerned that Kanopy could amount to a free version of Netflix, and then ultimately that would be depriving copyright owners of a source of revenue?

Ms. Susan Caron: I would say no, unfortunately, from my point of view.

In terms of our video streaming and downloading products—we also have one called Hoopla—you don't get the kind of material you get on Netflix. On Netflix you don't even get premier feature content, and you certainly don't get that on these services. Kanopy has only documentaries. Hoopla has second-tier feature films and a lot of children's material. They're popular, but there literally is not any competition, I would say, with the major moviemakers.

We've talked to our vendors about that, and the cost of acquiring any kind of service at a Netflix level would be astronomical, so I don't see that as an issue.

Mr. Terry Sheehan: Perhaps, Bill, you would like to make a comment on the comparison. Do you agree or disagree with that statement?

Mr. William Harnum: Well, I use Kanopy all the time. I watched *Call Me By Your Name* three days ago on Kanopy. That seems to me to be pretty.... I don't know what the arrangements are, but I love Kanopy. I never thought of it as mostly documentaries.

Ms. Susan Caron: It's primarily documentaries, but there are a few international features. It's based on a pay-per-use model, so it's very expensive for the library. We have to limit the number of downloads or streaming that somebody can watch in a month. We just launched it this year, and we're watching the growth increasing and the price increasing, so we'll probably be limiting it more and more.

Mr. Terry Sheehan: Bill mentioned the course pack that the union president had referenced, but I'm going to ask the University of Guelph, which is in the region, to comment about the course pack that has been developed and is used in the universities. There's trepidation on one side that it infringes copyright. I just want to hear your perspective on it.

Ms. Rebecca Graham: The reality with course packs is that their use and production have dropped precipitously over time. I have a data point here: for the summer of 2017, only a single course pack was produced for us, and there were only a handful in the fall and winter semesters, so that is a trend that's happening and has been happening.

The Chair: Thank you very much.

We're going to move to Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux: Thank you, Mr. Chair.

Ms. Martin, you made some comments earlier that copies are being made on behalf of students. I don't disagree with you, but I'm just curious as to how you know that. What's the mechanism by which you know that these copies are just being made on behalf of students?

● (1510)

Ms. Heather Martin: That's the work I actually do. We go in. When instructors ask for content to be made available for a course, our electronic reserves management system is integrated with the learning management system, and we copyright-clear all the content that needs to be made available for courses. It's posted, and those copies are made on behalf of the students.

Essentially, we act on behalf of the instructors in making that content available, but it would also apply and always has applied when an instructor made, for instance, print copies of something to hand out in class. That was permitted under fair dealing. In fact, it's something that always happened. We had fair dealing guidelines that allowed instructors to make copies for students.

Mr. Matt Jeneroux: I'm not saying that it's not happening that way, but I'm just looking more at what you call an electronic resource management system and how that works. We heard in Halifax a few days ago, it's called the syllabus service that the University of New Brunswick.... Are you familiar with that service?

Ms. Heather Martin: Yes, it essentially works the same as electronics reserves. The instructor gives you their syllabus or they give you the list of the items that they want made available for their class, and then we facilitate those being made available. The vast majority of those are linked directly to content on the digital platforms that we have licensed.

There are actually only a small percentage—16% of all readings provided to students on campus—that are actually copied using the fair dealing exception. The remainder are all direct links to licensed content, content freely available on the Internet, or faculty-created content.

Mr. Matt Jeneroux: Okay.

Ms. Graham, you made a comment—maybe it was an answer to Mr. Jowhari's question—about fewer students taking arts and humanities degrees. Is that because of what's happening with fair dealing with copyright, or is that just a product of circumstance?

Ms. Rebecca Graham: I certainly think there's been a trend at Guelph, and I don't think it's unique to Guelph. A reduced number of students are going into our College of Arts. The correlation that I was making, which is in part...I don't think there's a single cause and effect here. I think another possible cause is a reduction in the number of students pursuing arts and humanities degrees, thereby reducing the amount of content being asked for by instructors—especially creative literary content—that we would have been providing five or 10 years ago when the numbers were higher.

Mr. Matt Jeneroux: You're not saying that there are fewer students taking it because of what's happening. I just wanted to make that clear.

Ms. Caron, let's go back to Mr. Sheehan's question on Kanopy. I think we almost got to it there, but could you lay out again how the creators of the titles are effectively compensated by Kanopy?

Ms. Susan Caron: We buy Kanopy, obviously, through the vendor, and what the compensation is between the creator and Kanopy itself is one of the things that we, as libraries, really don't know. The same thing is true of OverDrive, which is the premier worldwide provider of e-books for libraries. We've actually talked to publishers who don't understand how much they are getting paid from Overdrive or what the agreement is. It's a very grey area because instead of just buying your book directly from the publisher or even through a library vendor where it's very clear, you have that third party who is between you and the publisher.

What happens within that realm is very difficult. As I was saying, we asked them, for example, why we cannot get access to Canadian titles that American libraries have access to, like Louise Penny's books. We don't have access to them, yet they're in American libraries. When we ask, they say, "Well, we forgot to negotiate the Canadian rights", which is no answer at all.

● (1515)

Mr. Matt Jeneroux: I think there's a lot more to go into there. The chair is cutting me off.

Can you tell us who your vendor is, so we can do some research?

Ms. Susan Caron: The e-book vendor? It's OverDrive.

The Chair: We're going to go back to Ms. Ng. You have five minutes, please.

Ms. Mary Ng: Thank you. I think I'm going to share a bit of the time with Mr. Sheehan.

I'm just going to pick up on a slightly different point that Mr. Jeneroux started. When we were in—I think it was Halifax, although it might have been Montreal—we heard from someone who had developed a digital platform. It's a digital platform that works with publishers and content producers and allows them to provide to institutions, consumers. It allows them to buy titles without going through a collective or through a package of this sort. What they were doing was they were sharing with us as a possible solution. I think it's a disparity. We're hearing that spending for institutions is going up. We're hearing that publishing revenues overall have not been greatly impacted. We're hearing from content creators that they have absolutely been impacted. So there's a bit of disparity. We also heard that everyone is in support of content creators being compensated for their work. So we are trying to get to what a solution could look like.

I guess I will ask the university for an example. Is that something that you could actually look at? Someone who has come in with a digital solution that provides the works of creators and has a different mode of sale that allows for transactional licences and even something more specific...so that there is a more direct way of being able to provide compensation to the creators. Is that something that institutions could look at? I'm asking the libraries, too.

Ms. Rebecca Graham: Part of it for us is both the flexibility as well as the efficiency. So while we have a lot of licensed content from five big vendors, some of which do include platforms, we would certainly be open to exploring that as a possibility because it's a model we're somewhat familiar with. As they say, the devil is always in the details. But I do think libraries, certainly academic libraries, fundamentally are not interested in taking money away from creators.

Ms. Mary Ng: And the library?

Ms. Susan Caron: As I said, we do buy the majority of our e-books on a one-on-one basis. We buy between one copy and 350 copies of e-books depending on demand. The thing that OverDrive gives us is a platform and a place to store those e-books, and we have 400,000 e-books stored there. It allows us also to circulate those e-books, to place holds on them, so that all of the system management is within the OverDrive platform. We buy everything, select everything online, so that is what it gives us.

A few years ago, we were involved in an attempt with eBOUND and a number of libraries to create a Canadian-made platform for e-books, and we tried a number of things, but at the end of the day, it was incredibly expensive. It would have cost us far more to run the platform than it would have to purchase the material, so that was given up.

Ms. Mary Ng: Okay.

Mr. Terry Sheehan: By way of finishing that question of why when you ordered the course packs, you said there was only one in use last year?

Ms. Heather Martin: One in the summer term, and I think we had six this past winter term. The reason was that the content is available online now. We've purchased licences to access the content in those course packs. For instance, instead of putting together a course pack full of journal articles, we simply put direct links in our electronic reserve system and the students access them that way. Instead of copying chapters from books and compiling them in a course pack, we have e-books online.

● (1520)

Mr. Terry Sheehan: It's electronic.

Ms. Heather Martin: Yes, we can link directly to them online. The payment happens when we purchase the content in the first place, and it also gives us the rights to use it in these ways.

Mr. Terry Sheehan: Thanks for clarifying that. It was very helpful.

Back to the Toronto Library and interlibrary exchanges, I'm thinking you must do them across Canada but also internationally. Do you, or no?

Ms. Susan Caron: Very occasionally we do them internationally. Occasionally we'll get a request from an American library or a U.K. library for something that is only available through Toronto.

In that case, and in many cases, the customer also pays for any costs involved in getting the book for them.

Mr. Terry Sheehan: That's what I figured.

I went to university in Michigan, so I'm familiar with some of the interlibrary exchanges and whatnot.

To Hugo, who was talking about—and it was touched on a little—fair dealing versus fair use. If you could contrast the two for us, what are some the advantages of fair dealings, and what are some of the contrasting deficiencies compared to fair use, if there are any?

The Chair: All in about 20 seconds, please.

Mr. Hugo Setzer: I'm not really familiar with any of those details, but as far as we understand, having such a broad educational exception does not comply with the specifics of the three-step test of the Berne Convention.

That's even being said by my American colleagues who use fair use. They have mentioned it's too broad; it's doesn't deal specifically enough with fair dealing.

The Chair: Thank you very much.

Now for our final questioner.

Mr. Masse, you have two minutes.

Mr. Brian Masse: Thank you.

I was looking at Overdrive myself. I was interested in the networking it does across other libraries.

How many copies...and does some cost-sharing take place? Maybe you can provide a little detail about that. I'm interested in the limitations, and now libraries are linking themselves together apparently.

Ms. Susan Caron: There are some consortiums, for example, the SOLS, the Southern Ontario Library Service, has a consortium. There are a number of consortiums in the States. I think the entire state of Ohio is a consortium.

In Toronto, we're just Toronto because we're privileged to have a very healthy budget. We have $90 million a year to spend on material, so we are able to spend a lot of money on e-books and audiobooks. We don't take part in a consortium because, given the draw from our population in Toronto, it would not work well for us to be part of a consortium. We need to limit the materials to the customers of the Toronto Public Library.

Mr. Brian Masse: Okay, that's what I was looking at too. I'm from Windsor, and they're part of that consortium.

Ms. Susan Caron: Yes.

Mr. Brian Masse: I thought that was interesting.

I'm curious as to whether it is still limited in how many...I guess those whole areas can have maybe 10 e-books out at once. Is the virtual world in that lending the same as the physical world?

Ms. Susan Caron: It is, and that is very difficult for our customers to understand. They know we're buying a licence for a digital file, and yet it acts as if it were a print book. There's one copy per user, so you put a hold on one copy of the file. For example, we have to buy 300 copies of *Bellevue Square* by Michael Redhill because that's the demand. It's just like a book. There are 300 of them, you put a hold, and you have to wait until those 300 are used up. It's not concurrent users.

Mr. Brian Masse: The interesting thing I think a lot of people look at, Mr. Chair—and I don't want to run out of time—is I'm willing to bet the unlimited access...and the issue is whether or not the creator's being rewarded for the multiple copies out there.

I'm willing to bet that the management between the creator and the user is where the real money's at. It seems we're consistently getting testimony that there's more money, but there's consistently less going back to creators, and I can tell you—I have a daughter who's going into university now—that student debt and student tuition have not gone down either.

● (1525)

Ms. Susan Caron: With *Bellevue Square* for example, which is obviously Canadian, we bought 280 e-books and 339 print books. Ten years ago we would have only bought the print books, so now we're practically doubling the number of books by Michael Redhill that we're buying.

How much Michael Redhill ended up with at the end of the day, I don't know.

The Chair: That's a good question. It'll have to wait for another time.

Unfortunately, we are out of time.

I'd like to thank our witnesses for coming down.

As you can see, there were a lot of hard questions and a lot of great answers. We certainly have a lot of work ahead of us.

Thank you again for coming.

We will be suspending until four o'clock when we begin our second panel.

Thank you.

● (1525)

(Pause)

● (1600)

The Chair: Welcome back, everybody, for our second hour of copyright discussions.

Today we have with us, from the Ontario Book Publishers Organization, David Caron, president. We have, from the Canadian Society of Children's Authors, Illustrators and Performers, Sylvia McNicoll, author. From Colleges Ontario, we have Joy Muller, chair, copyright interest group, heads of libraries and learning resources. From Artists and Lawyers for the Advancement of Creativity, we have Ken Thompson. Finally, from Ryerson University we have Ann Ludbrook, copyright and scholarly engagement librarian. That's an interesting title you have there.

We're going to start off, and you're going to have up to seven minutes. After everybody presents, we'll do our round of questioning, going back and forth. We'll have a good panel.

We're going to start off with Mr. Caron from the Ontario Book Publishers Organization. You have up to seven minutes.

Mr. David Caron (President, Ontario Book Publishers Organization): Thank you, Mr. Chair, and thank you to the members of the committee for having us.

My name is David Caron. I am the president of the Ontario Book Publishers Organization. I'm also president and co-publisher at ECW Press here in Toronto.

Also here is Holly Kent, executive director of the OBPO.

We represent more than 40 Ontario-based, Canadian-owned book publishers, companies that provide the risk capital and the creative partnerships to publish and print audio and digital for hundreds of Canadian authors every year in all genres to readers around the world.

Copyright is at the heart of our businesses and at the heart of our relationships with our authors, and those have been damaged by the Copyright Modernization Act. You've heard in general the kind of effect the act has had. I want to tell you some specific stories about publishers in Ontario.

I have a publisher from southwestern Ontario who has seen a loss of $50,000 per year in revenue and has been forced to develop scholarly books for the American market in order to survive as a business.

I have a publisher in Toronto who saw a loss of $90,000 per year and whose author walked into a classroom where they were studying her Governor General's award-winning novel, but all the copies were photocopied without compensation.

I have a university-based publisher who has seen a drop of $65,000 per year in revenue because the institutions it works with believed that one library copy equals unlimited course use.

I have a literary publisher who has lost $39,000 per year in sales, a sizable chunk of its annual revenue; a legal publisher who is now missing $55,000 of its sales; and a children's publisher who has seen a decrease of $195,000 per year.

In our own case at ECW, I can tell you that we've lost $102,000 per year in educational course adoption revenue on average versus our loss last year, which was $28,000. In other words, that revenue made the difference between being in the red and our profitability.

There are similar stories across our membership, and I don't want to go into all of them, but you get the picture.

It's not just the fact that the direct revenue through Access Copyright from educational institutions has dropped by almost 90%; it's that the private companies that service those institutions, specifically companies that offer digital content subscriptions and that used to carry our material, have now stopped paying for that content. A significant portion of our revenue, half of it in the case of our company, would have been paid out to our authors, so not only do we lose, but our authors lose as well.

A study by PricewaterhouseCoopers concludes that $30 million in licensing revenue alone has been lost, not to mention additional losses from book purchases, because educational institutions opt for free copying rather than buying books.

The Writers' Union of Canada reported that 80% of authors' revenue from educational use has disappeared.

As a publisher, if I use an author's work in another book, I can only use the minimum that I need in order to discuss that writing. Even then, I cannot use an amount that would affect the commercial value of that writing. I cannot affect the revenue of the original book. That is fair dealing for us. Yet clearly from our examples, the educational copying without compensation has affected the revenue of copyright holders.

The facts of unclear copying have been tested in the Federal Court through the York University case and have come before the Copyright Board. The interpretation of the Copyright Modernization Act by Canada's schools, colleges, and universities has created a perception of free access that goes beyond those legal limits and has created significant damage for Ontario publishers and the authors with whom they partner.

We ask that you clarify fair dealing for education and end unfair copying; promote a return to collective licensing in the education sector—there exists a reasonable means to negotiate a fair price between institutions and the creative sector—increase statutory damages to discourage systemic infringement; and ensure that we meet our international treaty obligations.

As Ontario publishers, we are ready to look at systems that provide copyrighted materials in digital, audio, and print media searchable by educators. The OBPO is involved even now in an online project to make it much easier for educators to access learning resources for our books. Fair payment for the intellectual property used in our classrooms is not only right and relatively cheap—as you've heard, it costs only a few dollars—it also invests in our future as a nation.

Our copyright-reliant professionals and industry should be growing. They should not be shrinking. They should be contributing to our nation, not looking to produce outside our borders. Students should be seeing that they could make a living in the creative and copyright-reliant professions, not that such pursuits are deemed worthless.

Thank you. I welcome your questions.

● (1605)

The Chair: Thank you very much.

We're going to move right to Sylvia McNicoll.

You have up to seven minutes.

Ms. Sylvia McNicoll (Author, Canadian Society of Children's Authors, Illustrators and Performers): Thank you, everybody.

My name is Sylvia McNicoll, as you know. I'm here to represent the Canadian Society of Children's Authors, Illustrators and Performers, better known as CANSCAIP, because writers and illustrators for children are probably the most affected by the fair dealings educational exemption, especially in the K-to-12 sector, although I know my material is taught in colleges as well.

We wish to have the educational exemption stricken totally from the Copyright Act. I've been writing for approximately 30 years, and I've served as CANSCAIP's president and in various other executive positions. My first book was published in 1989, and it was chosen as a novel study for schools in Atlantic Canada. I think, actually, it was just Newfoundland, which meant an instant sale of 2,000 books that bumped it into a Canadian best-seller.

Since then, many of my novels, including that lucky first one, have been published internationally in Scandinavia, England, Australia, and most recently, Korea and Colombia.

My colleagues consider me a successful, hard-working writer. Like most mid-list novelists, I try to cobble a living together through a stew of projects: writing books and articles, teaching, speaking, grants, public lending rights, and Access Copyright payback.

When that early novel-study sale occurred, a classroom set of novels would typically include 30 books. As the years went by, that number dropped down to five because of different philosophies of education, cost-cutting, and then in the latter years, yes, photocopying—that was earlier even—and downloading.

A few years ago, I visited a correctional facility for young adults in northern Ontario where one of my novels was entirely photocopied for the students without my permission. This was ironic because it was the grade 9 students who were incarcerated for breaking the law. This is what well-meaning, hard-working, law-abiding teachers do when the author is present to witness it.

But we did have Access Copyright licences that were respected in those days. I would receive some compensation for minimal copying. Licensing fees tend to act like speed limits on the 401. If the speed limit is 100 kilometres, most people drive at least five to 10 kilometres over, and maybe 20 when they're late.

While the fees were intended to compensate us for a few pages of copying and downloading here and there, mostly for the purposes of research for a project for an individual student, we knew that schools were copying well over the 100-kilometre speed limit.

Enter Bill C-11, educational exemption. In 2012, the fateful year before it took real effect, I earned approximately $46,000. Of that total, $2,578.68 was Access Copyright licensing fees, which paid for two months of mortgage and three weeks of groceries. That's important to a children's writer.

Schools, universities, and colleges decided that because of the educational exemption, 10% of copying now was entirely free. They decided that Access Copyright licensing was unnecessary. They also decided that copyright tariffs were optional, and they opted out. They are still photocopying and downloading well above that speed limit too.

My grandson recently brought home a photocopied story in a Duo-Tang folder. It was a Canadian-authored retelling of an indigenous tale, and it was Canadian illustrated, Canadian published, and Canadian edited. The photocopied story was 100% complete.

Let's be generous and say that it was 10% of an anthology. Who knows? The well-intentioned teacher—and they are; they're hard-working, and they just want to have their curriculum met—uses a photocopy of that folk tale year after year, instead of buying a text.

● (1610)

It is not her fault that her school board thinks a 10% grab of an anthology is fine because of the fair-dealing exemption. This photocopying of course negatively impacts the publishing industry and the cultural workers involved. Our Bachelor of Arts kids lose potential jobs, and they are good jobs.

I've just finished preparing my income tax for 2017. My income is down 90%, to $12,000. My Access Copyright cheque is, coincidentally, also down by about 90%, to less than $400. That's down from two mortgage payments and three weeks of grocery payments to one week of grocery money—groceries have also gone up.

Also, boards of education now are suing for part of my 2012 cheque back. Bill C-11's fair-dealing exemption alone is not responsible for my income decline, but fair dealing is a beacon of disrespect for content. The world watches as Canadian schools download and copy curated content in a government-sanctioned theft of 10%. You have turned the Highway 401 speed limit in reproduction of materials into the autobahn—no speed limit at all.

Last year, I had two Canadian best-selling mysteries for middle-grade kids published, and probably almost three—they straddled the year. I worked even harder in 2012, because of course authors are expected to do more promotion, social media, etc., but I give up: not on writing or presenting to kids—that is my passion, my identity—but I'm trying to make a living. It's impossible. I must tell my students the same. I am drawing my pension and cashing in my registered retirement funds. After that, I will sell my house.

What does that mean for future writers and cultural workers? Your job must become a hobby. You do it on your lunch break.

Can Canadian publishers survive that way? We are already seeing their demise. What we create needs to—must—appear in the schools to represent Canadian values. Make no mistake about that.

What we create provides excellent jobs. What we create deserves respect, and what we create deserves compensation. You need to fix fair dealing by removing the educational exemption. Otherwise, we will have no Canadian culture.

Thank you.

● (1615)

The Chair: Thank you very much.

We're going to move to Joy Muller, from Colleges Ontario.

You have up to seven minutes, please.

Ms. Joy Muller (Chair, Copyright Interest Group, Heads of Libraries and Learning Resources, Colleges Ontario): Good afternoon, Mr. Chair, Mr. Vice-Chair, and members of the committee. Thank you for the opportunity to speak to you this afternoon.

As you've heard, my name is Joy Muller. I'm associate director of Seneca College libraries here in Toronto, and manager of Seneca's copyright services. I'm here today representing the Colleges Ontario Heads of Libraries and Learning Resources.

Our college libraries' responsibilities include providing broad library collections, current technology and array of spaces, and library literacy instruction to support the various research and innovation endeavours within the academic programs and subjects offered at the 24 Ontario colleges.

Our colleges respect copyright and the importance of compliance with the Copyright Act, while we recognize that copyright law needs to balance the interests and the rights of both copyright and moral rights owners and users of copyright material.

Our libraries have created opportunities for consistent messaging across the Ontario college community on copyright compliance through a series of locally collaboratively created training modules, which are self-directed learning resources to help educate our faculty and staff. They're entitled "Copyright Literacy in Ontario Colleges", and these modules won the 2014 Ontario College and University Library Association's special achievement award. Over 90% of English-language Ontario colleges utilize them as either mandatory or optional throughout their institutions.

Consistently since 2012, many of the Ontario college libraries have identified copyright responsibilities as part of at least one employee's job scope. These staff advise students, faculty, and employees on the use of copyrighted materials. In keeping with these best practice efforts by the Ontario college community to support copyright and the exceptions within the Copyright Act, our first recommendation of three is to allow sections 29, 29.1, and 29.2 of the Copyright Act, which are directed to fair dealing, to remain unchanged. That would allow college libraries to continue to offer support and enhancements to teaching and learning that have grown under this legislation.

A further recommendation submitted by Ontario college libraries is to urge upon the government that section 41 of the act be adjusted to permit circumvention of technological protection measures for all non-infringing purposes, in order to ensure that we are able to exercise our statutory rights under the law. The law should be clear that it is only illegal to circumvent digital locks for the purpose of copyright infringement. This change to section 41 would enhance our ability to serve our users.

While prior to 2012, our library collections were largely print based, it's important to note that according to Statistics Canada, Canadian book sales actually increased between 2014 to 2016, as noted by Denise Amyot who presented to this committee.

College students have been asking for more flexible 24-7 access to learning resources, and the ability to access these resources from multiple devices. Ontario colleges have increased our digital footprint as a result, by purchasing licences to more and more databases, and increasing our user licences within those databases.

These digital resources provide around-the-clock access that the students are seeking, as well as supporting the students who are studying remotely through distance education opportunities. As a specific example, my library system at Seneca College has moved, since 2012, to a collection which is 90% digital, approximately 15% of which is comprised of Canadian content. We have in fact tripled our digital collection in those years.

College library collections have also increasingly focused on providing our users with access to open access journals, open educational resources, Creative Commons licensed materials, and resources that are publicly available on the internet.

Since 2012, most Ontario college library collection budgets have increased, and last year collectively, the Ontario colleges' libraries collections budgets exceeded $8 million. Statistics Canada reports that since 2012, expenditures of print and electronic acquisitions for colleges and institutes have increased by 26%.

● (1620)

The Supreme Court of Canada has made it clear that fair dealing is a user's right and that it must be given a large and liberal interpretation. With the changes to the Copyright Act in 2012, we feel that Canada has achieved a balance. The act grants extensive economic and moral rights to creators, while granting limited exceptions to these rights for users, libraries, and cultural institutions.

In the digital environment that college education is increasingly adapting for both teaching and learning, our libraries are licensing much of the content that our faculty and students use. These contractual obligations often have clauses that restrict the use of materials and override the exceptions that the Copyright Act provides. The Copyright Act should prevent vendors from over-riding and removing uses of materials by licence that the statutory rights in our act provide.

We would, therefore, like to request as our third and final recommendation that an amendment to the Copyright Act be considered that indicates clearly that no contract can take precedence over the exceptions within the act itself.

Thank you.

The Chair: Thank you very much.

We're going to move right on to Mr. Ken Thompson.

Mr. Ken Thompson (Chair, Artists and Lawyers for the Advancement of Creativity): Good afternoon. My name is Ken Thompson and I'm here with my colleague Ms. Marian Hebb. I would like to thank the chair and the members of this committee for inviting us to appear on behalf of Artists and Lawyers for the Advancement of Creativity, ALAC.

ALAC is a not-for-profit corporation that for over 30 years has been helping artists, actors, musicians, dancers, writers, filmmakers, and other creative Canadians address legal problems. ALAC provides the Artists' Legal Advice Services, ALAS, which is a free legal clinic for creators wishing to understand their legal rights or obtain guidance on dealing with specific legal problems. ALAC also offers educational programs for creators to help them understand the laws that affect them.

The ALAS clinic is operated by practising arts and entertainment lawyers and intellectual property lawyers with the administrative assistance of volunteer students from the University of Toronto. Our lawyers donate their time to provide advice to those creators who may not be able to access expensive or more intimidating alternatives.

Twice each week, ALAS lawyers meet with Canadian creators from all artistic disciplines who experience the impact of copyright laws on their professional lives and who need to sign copyright-related agreements and contracts to pursue their professional endeavours.

Today, because of limited time, we would like to list a number of specific recommendations that would improve the situation of Canadian creators.

With respect to fair dealing for the purposes of education, we would ask that you revise or add regulations to the fair-dealing exception, which was brought into law under section 29 in 2012, for the purposes of education. Educational institutions have adopted their own arbitrary and overly broad guidelines on what they think they should be able to copy without permission from authors and their publishers.

Limit the scope of the user-generated content exemption. Give collective societies management of the right of users to create new works using an author's existing work or performance without permission, such as fan fiction or mash-ups of songs, if for non-commercial purposes. A song mash-up or an unauthorized sequel to a novel or film by someone else could scoop the value of the author's or performer's original. The user-generated content exemption was added to section 29.21 in 2012, and it should allow authors and performers to choose whether or not to authorize user-generated content for either non-commercial or commercial purposes, and if the latter, to receive payment.

Revise the parody and satire fair-dealing exemption. Add to parody or satire as purposes of fair dealing in section 29 to cover additional forms of pastiche, and include the creation of works, including artistic works that use excerpts or clips from other works without further legal risks. Artists encounter these issues in their work and have brought them to our clinic. An amendment here could make an existing work more accessible.

Extend the term of copyright for authors. The term of copyright for authors should be extended from 50 years to 70 years after the author's death to stay in line with legal developments elsewhere, including in the United States, the United Kingdom, the European Union, and Australia. Authors as well as owners of corporate businesses should be able to bequeath what they have worked to create to at least their children and grandchildren. This amendment requires a change to section 6.

With respect to musical performances in films and on television, an amendment should be added to the act to remunerate performers for their recorded musical performances fixed in films and other audiovisual works when they are broadcast and digitally communicated. This would require an amendment to the definition of "sound recording" in section 2.

Remove the broadcasters' exemption. Remove the $1.25-million exemption that subsidizes commercial broadcasters and deprives performers of remuneration. Repeal this special and transitional royalty rate in subsection 68.1(1).

With respect to statutory damages for non-commercial purposes, get rid of the caps and bars on statutory damages for infringement for non-commercial purposes that make the remedy in subsection 38.1 (1)(b) potentially nothing more than a single licence fee for many non-commercial infringements by more than one infringer. Effective statutory damages are essential.

● (1625)

In conclusion, all of these items affect the incomes or financial interests of authors and performers and their ability to exert reasonable control of uses of their work. Several of them provide greater access for both professional and amateur artists to make reasonable use of works of others.

From our work at ALAS we know how difficult, often close to impossible, it is to earn a living working as a full-time professional artist. We thank the committee for the opportunity to share our experience and views for copyright reform. Ms. Marian Hebb and I will be pleased to answer your questions. Thank you.

The Chair: Thank you very much.

Finally, from Ryerson University, Ann Ludbrook. You have up to seven minutes, please.

Ms. Ann Ludbrook (Copyright and Scholarly Engagement Librarian, Ryerson University): Hi there. I'm going to start with a land acknowledgement because we're very near Ryerson. Toronto's in the Dish With One Spoon Territory. The Dish With One Spoon is a treaty between the Anishinaabe, Mississaugas and Haudenosaunee that bound them to share the territory and protect the land. Subsequent indigenous nations and peoples, Europeans and all newcomers, have been invited into this treaty in the spirit of peace, friendship and respect.

Thank you for giving Ryerson University time to speak to you today. I also appreciate all your work in this important statutory review process.

My name is Ann Ludbrook. I'm the copyright and scholarly engagement librarian at Ryerson University. I would also like to acknowledge my colleague, Julia Shin Doi, general counsel of Ryerson University, who is also attending.

At Ryerson we are committed to diversity, entrepreneurship, and innovation, and to ensuring that what our students learn in the classroom is enhanced by real-world knowledge and experience. As such, Ryerson provides an important voice in advocating for copyright laws that support innovation and research, scholarly work, and teaching within the higher education sector in Canada. Such a copyright law includes fair dealing, as well the ability for circumvention of technological protection measures and related technologies for non-infringing purposes.

The law should be forward-focused and flexible to enable Canadian innovation in artificial intelligence, augmented reality, and other non-commercial data analysis. We also endorse laws ensuring protection of indigenous knowledge.

Like all university libraries, Ryerson spends substantial amounts to access and purchase essential information resources for students and faculty. Changes to the publishing world mean that the vast majority of these scholarly resources are in digital form and this trend is continuing.

More available content, more content in digital form, as well as inflation from 3% to 7% per year all influence spending increases.

It is important to note that increasing digital content enables direct linking to purchased resources through secure learning management systems, and at Ryerson to our e-reserve system, further reducing the need for print course packs and other course handouts.

Through Ryerson's copyright management e-reserve system and other commissioned services we spend more than $150,000 annually in transactional commissions for copies that are not within our licensed resources or are beyond fair dealing. Some of these transactional licences are direct publisher transactions or brokered through the U.S. Copyright Clearance Center, and fees are returned to Access Copyright as Access Copyright does not currently permit direct transactional commissions—as far as Ryerson knows.

More than 80% to 90% of the content we make available to our students in e-reserve is covered by licences for digital materials, links to legally posted, publicly available materials and open-access content.

Ryerson has also put into place copyright management safeguards to help ensure copyright compliance at our institution. Ryerson has a fair-dealing guideline that places reasonable limits on the copying and use of copyright material. Ryerson also provides copyright education for instructors, staff, and other community members.

We are aware of the committee's specific interest in Canadian content, creators, and publishers. At Ryerson, the majority of what we both use and create for research and teaching purposes is scholarly material rather than literary or creative works. A relatively small scholarly publishing industry in Canada means that much of what we create and consume is published internationally. However, we do spend more than $200,000 per year specifically on Canadian collection materials, both print and electronic.

It should also be noted that open access, open education resources, and other models for freely sharing and accessing scholarly and educational materials are important and have continued to impact the traditional publishing industries over the last 10 years.

Ryerson strongly supports copyright laws that recognize both the rights of copyright owners and the rights of the users. We join with other higher educational sector stakeholders, including Universities Canada CAUT, and CARL, the library association, in supporting fair dealing for private study, education, and research.

We believe that the 2012 Copyright Modernization Act allows limited use of works for education, and it remains an important investment in the future of our country to foster education, innovation, and scholarship.

● (1630)

The Chair: Thank you very much.

We're going to jump right to Ms. Ng.

You have seven minutes.

Ms. Mary Ng: Thank you, everybody, for joining us today and for allowing us to hear your perspective on this important study that we're doing.

As we travel around, we've been hearing a lot of perspectives. We've certainly heard a respect overall for content creators. Yet, at the same time, we've heard there's a real issue with respect to authors and content creators, and the impact on their income.

Through this study we're going to try to learn as best we can and, hopefully, at the end of this do right by everyone, putting forward a set of recommendations, based on what we will learn over the many months.

Mr. Caron, you talked about the need for clarification of the education provision, the education exception. Can you talk to us about that? We've certainly heard the need for that from a few people now. What would that look like for you?

Mr. David Caron: You've heard from both panels today that there is this gap between the guidelines that are posted and that are promoted by the colleges and universities to the people who are doing the copying and what's actually happening. There is also the issue of the gap between what those guidelines are, and what publishers and content and copyright holders would agree those guidelines should be. These are the kinds of gaps that I think we need to bridge somehow.

● (1635)

Ms. Mary Ng: I'll pick up on that, because I was hearing about it today

We've heard from universities and from colleges that the content they are licensing for their students tends to be in the realm more of scholarly text and material and less of the literary material. We also heard that rather than paying through a tariff or to Access Copyright, they're acquiring more transactional licences that they're paying to authors directly. And we're hearing that the expenditures are there.

I draw this additional hypothesis. Could we say that at the post-secondary level for colleges and universities there's an issue, and then for your literary works, it's the K-to-12 system? I'm trying to understand that a little, based on what we've been hearing.

Ms. Sylvia McNicoll: Ann said "reasonable limit". I would like to know what that reasonable limit is. I feel that colleges or K to 12 have assumed it is 10%, whereas we feel it's the nature of the copying.

If you copy one page of my story, that's fine. But if you copy a whole poem on one page, you're copying someone's work and distributing it and you are using it in place of a textbook. It's the nature of the copying; it's not the reasonable limit, or whatever they feel because of that educational exemption.

Ms. Mary Ng: Could the colleges and the universities please speak to that?

Ms. Joy Muller: Thank you.

In the case of the colleges, because of the money we are putting into our licensing of digital resources, when faculty are looking to create course materials, they are looking to our databases, where we have paid a licensing fee. As I noted, we are paying for more and more user licensing within the contracts with individual vendors. If a faculty needs to use a certain resource, the faculty can send the students to a persistent link. They aren't making those physical print copies as much as they are linking to our database. A student has to log in and be using it as an individual user.

Many times they can't use it for a whole class, because we don't have an unlimited user licence. But there are some vendors where we do have unlimited licences that we have paid for. We have paid up front in our contracts for access to the materials for our faculty and our students.

I will just mention that in the case of course packs, for example, many of us have third party printers that have licences with consortiums like Access Copyright. If a faculty wants a course pack put together and printed, they will be working with a third party printer that we do not engage with, and that third party printer has the appropriate consortium licensing arrangements.

Ms. Ann Ludbrook: We have Access Copyright in the course pack section at Ryerson. We do our fair dealing within our e-reserve system, in our digital content. So we do actually still have a relationship with Access Copyright.

Ms. Mary Ng: In respect of going through a vendor, you said that 90% of your collections now are digital, 50% have increased in Canadian content, and you tripled the digital collection. Do you know if that increase in purchase is getting back to the Canadian creators?

Ms. Joy Muller: We have no idea of that. We are engaging with the vendors specifically on the databases we want or the e-books, and we can only engage because many of our faculty are authors as well at Senecaand across the Ontario community colleges. We can only assume that vendors are being fair to their authors and their creators, but we have no way of knowing that individually.

Ms. Mary Ng: Do the publishers want to comment on that?

Mr. David Caron: Yes, I can comment on that directly from our experience at ECW Press. I mentioned $102,000 this year, and 70% of that came through these digital database providers. Two years ago, they came to us—we predominately use EBSCO, one of the databases—and they said that because of the educational exemption they no longer needed to pay us for that content.

● (1640)

The Chair: Thank you very much.

We're going to move to Mr. Jeneroux.

Mr. Matt Jeneroux: Thank you, everybody, for being here today.

Ms. Ludbrook, can you clarify what your relationship is with Access Copyright? I was under the impression you didn't have any—

Ms. Ann Ludbrook: We don't have an Access Copyright model licence or a site licence agreement, but what we do is that our course packs are produced at an outside vendor covered by an Access Copyright licence. Then they're delivered to the bookstore and we sell them. The copyright is cleared through an outside vendor.

Mr. Matt Jeneroux: So the vendor has a relationship with Access Copyright and you purchase from that vendor, so indirectly—

Ms. Ann Ludbrook: Yes, we purchase the content back. As well, we do have an e-reserve service at Ryerson.

Mr. Matt Jeneroux: What's the name of that vendor, just so we get it on record?

Ms. Ann Ludbrook: I'm at the bookstore, but I think it's Gilmore in Ottawa, a printer. I'm not the bookstore manager, so....

Mr. Matt Jeneroux: We may call them up to clarify.

My original question until you mentioned that was going to be similar to the question asked of the University of Guelph. Maybe we'll still go down that road. The legislation was passed in 2012. Your licence with Access Copyright expired in 2015. Were you there at the time, in 2015?

Ms. Ann Ludbrook: I was there when the licence expired. I've been at Ryerson since 2011.

Mr. Matt Jeneroux: Why did the university choose not to renew the licence with Access Copyright?

Ms. Ann Ludbrook: One of the reasons we didn't choose to do it was that we were looking at our increase. We had wanted to track our usage in terms of fair dealing and what we were using before we opted out, so we chose to sign a model licence in 2012. We looked at what we were using in e-reserve as sort of a snapshot—because we have quite a few courses in that system—and we found that only 10% of what we were making available was fair dealing, and 90% was either transactional licences, database material that we link to directly, Internet links, or open access material. So 90% of our content was electronic, and we felt that, with the Canadian laws as they stood, we were going to go ahead without a licence.

Mr. Matt Jeneroux: It had nothing to do with any increase in price, adding of tariffs, or anything like that?

Ms. Ann Ludbrook: You're talking about an increase in price?

Mr. Matt Jeneroux: Yes, were there other factors in play? We heard University of Guelph say that because—

Ms. Ann Ludbrook: Well, certainly, that had been the original situation. I think there was a feeling that it wasn't a good value for our students as it stood, and we certainly had students advocate for that.

Mr. Matt Jeneroux: Sorry, students were advocating that they didn't want this copyright? Oh, okay. How were they advocating?

Ms. Ann Ludbrook: They were expressing themselves to the president.

Mr. Matt Jeneroux: Was it in the form of student elections? Was it an election issue? I'm just trying to get to the bottom of it. Take me back to 2015 and what happened exactly. We've had representatives from other universities in here, and Copibec was with us yesterday. A number of those witnesses indicated that essentially there was an agreement in place back in 2011, during the original hearing, that everybody was going to stay with Access Copyright. I'm trying to get a sense of what changed from 2011 to 2015, and from then to today.

Ms. Ann Ludbrook: I really think it was that we tracked our use of the licences. Because fair dealing for education is actually in the Copyright Act, we felt that our decision was reasonable, and we decided to go outside of the collective licensing because it didn't seem to be a good value for us.

Mr. Matt Jeneroux: That just happened because of the timing of the licence expiring in 2015. Okay.

If we could go to the UGC exemption that you mentioned, Mr. Thompson—the YouTube exemption—we're seeing a number of associations come forward and say the UGC exemption is problematic. YouTube and Google are essentially creating their own music platform. It's called YouTube review, or something. They're moving to their own music-playing platform. Does that essentially help mitigate some of the UGC exemption issues?

● (1645)

Mr. Ken Thompson: My colleague Ms. Marian Hebb has joined me here, and she'll address that.

Ms. Marian Hebb: Can you just rephrase that a little bit? The UGC exemption has opened up an enormous area in which people can base new works on existing works and use those new works in ways that are competitive with the existing works or priced equal to them. They can use them in different ways. It's very leading edge internationally, and it's an exception. Canada is the only country we're aware of that has done anything like that. It's considered quite extraordinary, internationally, to give such freedom to people to use other people's existing works, and it's causing problems.

Mr. Matt Jeneroux: You're doing a great job buying us some time—I'm finding the name here. I'm supposed to stick to the notes my staff provide me, but I don't.

Part of the concern is that it was essentially put in place for the mash-ups and compositions that Mr. Thompson indicated. Are the changes to what YouTube is doing essentially making the YouTube exemption okay now, in your opinion?

Ms. Marian Hebb: It's making it okay for the people making the new works. It's not making it okay for the people who have written the original novel to which somebody else has written a sequel, or for songs that people have mashed into new songs that may have displaced or made a mockery of the original song.

Mr. Matt Jeneroux: I'm sorry for my incoherence. It's YouTube Remix. Thank you to everybody who passed that on to me. I am done.

The Chair: Thank you very much.

We're going to move to Mr. Masse. You have seven minutes.

Mr. Brian Masse: Just to follow up, they went to some of the other publishers and platforms for it.

Ms. Muller, one of the things you identified, and we've heard it from academic institutions as well, is that staff—professors, instructors, and so forth—are also the authors and creators. You mentioned that you don't have any idea what compensation they're getting. What amount does your own college compensate in that respect?

Ms. Joy Muller: Right now, I'm not involved with the intellectual property negotiations between authors and administration at the college, so I couldn't speak to that specifically. I do know that from the library perspective, if an author makes us aware that they're publishing, we purchase a copy for the library whether it's in e-form or print form, whatever the author prefers. We will keep it as part of our collection. The negotiation between the administration of the college in terms of whether the author has created their work as an employee of Seneca or as an independent author on their own time, with their own resources, would be completely different. I'm not advised on that.

Mr. Brian Masse: They're probably different. The thing is, we're still trying to figure this out. What's consistent about the testimony we've heard is that basically creators, one way or another, are not getting compensated. What I've heard so far in terms of Ottawa, Halifax, Montreal, and here in Toronto is that it seems to be one of the recurring themes.

It would just seem odd to me that universities and colleges wouldn't.... I don't know. Is it a free-for-all in terms of each creator, or do you purchase from their publishers? Is it a mixture of things? I'm just trying to figure it out exactly.

● (1650)

Ms. Ann Ludbrook: Can I comment on this? I'm from Ryerson.

Mr. Brian Masse: Sure. It's for both of you.

Ms. Ann Ludbrook: I actually consult with faculty members who are signing author agreements with journal publications. The majority of the material that we purchase is journals. We purchase in terms of serials; 78% of what we purchase in the library is journal material. When an academic author is signing with Elsevier or Taylor & Francis, they sign an exclusive licence to these journal publishers, and they receive no fees and no royalties for that use at all. Basically they're getting reputation but they are not getting any money. They work for free.

Mr. Brian Masse: It's like YouTube.

Ms. Ann Ludbrook: Yes. They work for free as editors for those journals. They work for free as authors for those journals. They work for free in that profit.... But they do. What they get is reputation and they get impact and they may get tenure because they have published in a certain journal. That is the scholarly publishing cycle. It's a very strange and elastic market.

Ms. Joy Muller: I was recently at a conference in Washington, D. C., on computers and libraries, and one of the things they noted at that conference was that there are three tiers now for authors. There is the gold tier where the author will actually pay the publisher to include their work in the publisher's publication in order to get that recognition.

I'm suspecting that is happening more and more with the larger publishing companies, because a researcher wants to get their research out there and they're willing to pay to get their materials published, but it is not directly impacting a library that would pay the publisher to get access to the database where that piece of material is published.

Mr. David Caron: Just from a Canadian publishing perspective, we publish a scholarly journal, and there was no way that we would not pay an author who contributed to each issue of the journal. Every author who contributed was paid. That's actually the material that is no longer carried by that digital platform.

Ms. Ann Ludbrook: If management has an academic author agreement—and I'm actually asked to consult in this area—that actually pays an author, other than a book publishing contract.

Mr. David Caron: The publishers that you have cited are foreign publishers. For us who deal with the Canada Council and the Toronto Arts Council, there are very clear positions for us about how we must compensate our creators.

Mr. Brian Masse: I honestly think from the delegations we've had, everybody wants to see a sense of justice in this. It seems the process in itself and the way that we have the system is certainly frustrating everyone.

Can I just maybe get your take on the Copyright Board, and if you have an opinion on it and any suggestions for that?

I'll start with you, Mr. Caron. If you don't, you don't have to, but I'm trying to get this as I go across.

Mr. David Caron: I'm not as familiar as my colleagues are about the Copyright Board.

Ms. Sylvia McNicoll: I find that it doesn't matter what the copyright says; the schools ignore it anyway.

Ms. Joy Muller: From the Ontario college libraries' perspective, we recognize that they don't seem to have the resources to make any decisions.

We've heard many things over the years about how long it's taking and about how we are losing creators in Canada because the Copyright Board is not making certain decisions in a timely way. We would encourage the government to give it those opportunities and resources to make decisions that benefit creators and users.

Ms. Ann Ludbrook: We do feel that the Copyright Board is taking a really long time, especially on the educational tariff, especially in the university sector. As was said earlier, we've been waiting since 2011 for a tariff to be completed.

Retroactive payments are considerably worrisome for universities. I don't think that there should be retroactivity.

Mr. Ken Thompson: The Copyright Board is a very essential body in this area of law. In fact, most of the Supreme Court of Canada decisions start at the Copyright Board.

I'm not downplaying the book publishing industry, but it cuts across all of the industries that rely on tariffs that the board sets.

We know that the Senate held hearings a couple of years ago on the operation of the Copyright Board. There have been internal studies that have been going on for years. I understand now that the heritage committee is having a second look at remuneration. It clearly needs to be reformed. Something needs to be done, whether it's to add more resources or to set standards that require the board to meet its obligations in a timely manner.

● (1655)

Mr. Brian Masse: Thank you very much.

Ms. Marian Hebb: Can I add a little bit to that?

Mr. Brian Masse: Very briefly.

Ms. Marian Hebb: The tariff is dealing with royalties right across the board, affecting a whole collection of bodies of work.

This just gives me the opportunity to correct something that was said before. Besides the tariffs, you have these transactional licences. I would just like to put on record that Access Copyright does do a lot of transactional licensing.

The Chair: Thank you.

We're going to move to Mr. Sheehan.

You have seven minutes.

Mr. Terry Sheehan: Thank you to all the presenters. I said to the previous panel that it's always great to go to the different regions.

I even noticed in Sylvia McNicoll's analogy where she used driving.... If the speed limit is 100, if the people on the 401 and the highways around here start driving at 110 and then 120, the next thing you know, they're blending in and now they're at 140 and 150. Driving here from northern Ontario, I experience that and notice that. I was like, "Wow, are they ever...." It seems that everyone starts driving at those speeds.

We're talking about the Copyright Board and tariffs. But in my mind as well—and it goes to some of what Ken was saying, and this is where the question is for Ken and the board—I'm wondering if we are doing a good enough job of educating people. This regardless of what the rules are because the rules seem to be, perhaps, not enforced by everyone all the time.

If you didn't receive any issue or problem, then you went on.

Ken, you talked about an interpretation of the rules and whatnot. You're dealing with a number of artists and a number of issues. Are we doing a good enough job of educating whoever it is? In the previous panel, they mentioned that by the photocopier there is a sheet of paper saying what the rules are. Is anybody reading that?

Are our educators, even at the high school level, educating our students? Are our educators at the high school level being educated on what the rules are, regardless?

Sylvia, I think I'll go to you first. Do you think we could do a better job, regardless of the rules, in educating some of the people on the importance of copyright and protecting the creator's rights?

Ms. Sylvia McNicoll: Unfortunately, because of the Internet and the feeling that content is free, students are extremely resistant to the idea that intellectual property isn't a free-for-all, so start with that.

Can we educate the teachers better, or the students better? You're going to have to jump over the hurdle that for some reason content is free. They don't care. If they spend $1,000 on a phone, they think the phone should come with free music and books, just because they spent $1,000 for that phone.

I am still with that 10%. That is my issue and that is my problem, that somehow schools have assumed that 10% is okay. So if it's okay that they do that, and then the students do it, look at that prison example. If she photocopies a book, what are the prisoners going to do when they get out?

We are leading by example as well. We're saying that it's okay to photocopy a little. I know I'm coming from a different perspective; I'm coming from the K to 12, and with the younger kids you photocopy more than you download.

Have I answered your question?

● (1700)

Mr. Terry Sheehan: I think so, and that's some of the stuff I made note of.

Ms. Sylvia McNicoll: We almost need a campaign for kids to understand that content is curated and created.

Mr. Terry Sheehan: In keeping with your analogy, I think that's part of what we've done with driving, whether it's drinking and driving, distracted driving, speeding, or stunt driving. The education has always been imperative, and the fact is that it's my daughter who is the enforcer of the family to make sure everyone is adhering to the rules. I just wanted to point that out.

I'm hearing that more and more that—

Ms. Ann Ludbrook: Could I add something to that?

Mr. Terry Sheehan: Yes, go ahead, Ann.

Ms. Ann Ludbrook: Right now I'm working on an OER Textbooks project for eCampusOntario, which is a digital citizenship tool kit. We have a chapter for first-year university students on copyright and being a good digital citizen.

I do think the universities are aware of that, and that digital literacy is being taught at universities. At our institution we are thinking about that, libraries are thinking about that, and we have modules that are available. The colleges have a module, and some of the authors on the project we're working on right now are college authors who work on modules for the college sector.

I think universities are grappling with this issue, and we are educating our faculty as well. In fact, I would say that since we've opted out of the Access Copyright agreement, we have been working, across the higher educational sector in Canada, far more on trying to raise awareness and talking about what copyright is, what they have to do and what their responsibilities are, than they have ever heard before in a collective licence regime.

Mr. Terry Sheehan: Joy, would you like to comment?

Ms. Joy Muller: This is very close to my heart because I was the project lead for copyright literacy in Ontario for a community colleges project.

Of these modules—there are almost 20 of them—seven of them are specific to fair dealing in copyright, as the Copyright Act lays out fair dealing. We have very specific modules that are based on questions that faculty have come to us and asked—for example, whether they can post a particular YouTube video for their class on course management systems. We go through all the fair-dealing steps, the six steps that faculty have to consider in individual cases.

These modules, as I mentioned, have won an award. We presented at a library conference about a year after they were created, and many universities have approached us about gaining access to these modules. We've put them under a Creative Commons licence, and they are now available by a link on eCampusOntario, through the Ontario College Libraries learning portal.

If you go to eCampusOntario, you can see a nice little blog that's just come out about the learning portal. It was created by the heads of libraries and learning resources under the auspices of their chair, Tanis Fink, who also happens to be my director. At the portal, you will see that we have a faculty tool kit and that these modules are now available for anyone to access on the web. So we are striving very hard to educate.

Ms. Sylvia McNicoll: Could I just comment?

Nobody ever consults the writer, though. I don't feel that they consult the content provider.

Mr. David Caron: That would be my question also.

What was the involvement of the copyright holders in the development of those modules?

Do they have a voice in that message being sent out to that faculty?

Ms. Joy Muller: We based those modules on the Copyright Act itself, consulting with CICan, which was ACCC at the time of creation, that deals with creators and authors as well as the educators and legal counsel. We tried to touch on as many areas as we could in creating these.

The Chair: Thank you very much.

We're going to Mr. Jeneroux. You have five minutes.

Mr. Matt Jeneroux: I'll quickly follow up on that.

Writers weren't consulted essentially because the other organizations and your lawyers satisfied that need.

Ms. Joy Muller: I feel that's correct, although I would say that my recollection isn't exact in terms of when we took the faculty questions and created these modules. Many of the faculty we consulted with may have been creators themselves.

● (1705)

Mr. Matt Jeneroux: Ms. Muller, just so I know, are Colleges Ontario...? It's a little different where I come from; we have our polytechnics and that. You guys just lump them all into one, right?

Ms. Joy Muller: Well, I hear rumours that it might not be the case in the near future, but right now we are all colleges.

Mr. Matt Jeneroux: That depends on the outcome of the provincial election, perhaps. We'll see. We won't get into politics here.

Ms. Joy Muller: Thank you.

Mr. Matt Jeneroux: Have colleges opted out of Access Copyright? From my understanding, about half of universities have, and half of universities haven't.

Is that a similar ratio in Colleges Ontario?

Ms. Joy Muller: I did a survey when I received permission to speak of the 24 Ontario community colleges. Most have opted out. Of the 24, there are four or five that still have licences with Access Copyright.

I will point out that collection budgets, the size of the library, and the size of the student and faculty populations really vary across the community colleges in Ontario. Directly answering your question, not all 24 have opted out, but the majority have.

Mr. Matt Jeneroux: Did you get a sense as to why in your survey?

Ms. Ann Ludbrook: When Access Copyright applied for their increased tariff, it went from $3.50 per student—every year we would pay $3.50—to $35 per student at the colleges. At that point in time, because we were all moving towards a more digital environment and demand by students for 24-7 access, similarly to what Ms. Ludbrook told you, we started looking at our transactions. We started noticing that many of the things we would pay Access Copyright for, if we continued in our licence with them, we were already paying with our vendors online for our digital.

Really, we were trying to figure out why we were double paying for access to this content, particularly when we pay and give our students 24-7 access, and our faculty could create persistent links so they didn't have to make any copies; they could send the student directly to the link. Really, all of us started looking much more closely at what we were paying for. Seneca was one of the first back in 2012. Our contract was coming due and we opted out.

Mr. Matt Jeneroux: You opted out in 2012.

Ms. Ann Ludbrook: Can I just comment?

Mr. Matt Jeneroux: Sorry, I know you both want to comment.

I just want to get to what that means. Explain to me the difference between.... You keep mentioning the digital 24-7 content versus the paper content.

Ms. Joy Muller: We are currently dealing with over 80 vendors of digital content for our students. If a faculty decides they want a student to purchase a textbook, that's arranged through the bookstore and the student is required to purchase the textbook. We have nothing to do with that. In the case of faculty wanting supplementary material, or to create a digital course pack using the resources the library has paid for by sending the students to different articles, journals, newspapers, and even e-books, they have that option now. They can browse our library catalogue, and they will find resources they need.

In the case of many of the college libraries, we have directional resources. We call them subject guides. If the student is learning about biology or chemistry, we might have a subject guide that sends them to the databases that contain the articles that would be relevant for their course. This is available for both faculty and students.

In addition to that, there are more and more committees springing up across the college library communities around open educational resources and open access, as encouraged by eCampusOntario.

● (1710)

The Chair: Thank you very much. We will get back to you.

We're going to move to Mr. Jowhari. You have five minutes.

Mr. Majid Jowhari: Thank you, Mr. Chair. Thank you all for participating on this important topic.

A couple of words came out that I want to echo back. I want to get your input on a topic that, in my mind, needs a little more clarification. I need some guidance, at least.

A number of times there was discussion around gaps existing. This is the gap between the content creators getting fairly compensated and quality content being available for the users.

Reasonable limits and the nature of work were discussed. Is there an issue with the interpretation of the act? Are there concerns around definition and clarity of the act? Are there issues around open interpretation that allows that much flexibility for someone to drive 100 kilometres and then somebody else drives around 150 kilometres? Is there an over-application of the act in other areas that doesn't need to be there? Is there a scope issue? Do we have an oversight issue? Is there an issue with the process? Do we have a punitive damage process?

Help me try to figure this out.

Mr. Thompson, you touched on a number of recommendations, and as fast as I was trying to write.... I think you would be a great start to this.

Mr. Ken Thompson: What you referred to is the value gap: the value between the use, the user, and the creator. From the creator's perspective, there is less value, on the user's side, given to the work that they create. Their interest and compensation is diminished because of the value gap.

There are a number of reasons why we have a value gap, as has been expressed. One of them is that intermediaries—this comes back to YouTube and user-generated content—are not liable. That means third parties are often not liable. I come to my issue about performers and their ability to collect compensation when their recorded musical performances are used in the soundtrack of a film. They are not entitled to that money, even though other creators are.

Mr. Majid Jowhari: What would you recommend we change to amend the act?

Mr. Ken Thompson: The good thing is we have a five-year review. That's one of the best things. Instead of putting the Copyright Act on the shelf, I think it's more important now than ever that copyright be given a very good going over, because it impacts much more than it did previously. It was kind of an arcane area of law, but now it cuts across everything, including software development. One of the best ways to protect software is through the use of copyright law.

Laws have to be clear. Obviously, the discussion here this afternoon indicates...is the law about an educational exemption? It's not clear to everybody at the table.

Mr. Majid Jowhari: Sylvia and David, can you give some input?

Ms. Sylvia McNicoll: As I keep saying, everyone jumped to thinking it was a 10% grab, and that's really why the college has opted out because that 10% is now free....

Mr. Majid Jowhari: That's a definition. Is it perceived that or...?

Ms. Sylvia McNicoll: No, it's perceived by the educational institutes and if we narrow that down, I would suggest we return to the Berne Convention. I don't know, but I think they had three measures. One measure was, does it interfere with the creator's ability to be compensated? For example, my example of photocopying a whole book, of course it interferes. Or, if you may be photocopying 10% of an anthology, yes, but you are interfering because that creator....

Mr. Majid Jowhari: Is it fair to say that the perceived 10% guideline is only a perceived guideline?

Ms. Sylvia McNicoll: Yes, it's only perceived, and it's in every one of their....

Mr. Majid Jowhari: Is it fair to say we don't have a well-defined process to be able to determine...?

● (1715)

Ms. Sylvia McNicoll: Exactly, sir. We're determining it in the court of law.

Mr. Majid Jowhari: If you don't have a process how could you measure it and how could you bring oversight to it? Do you believe an oversight exists for any body that says this content was misused or it was replicated more than the number of times it needed to be?

Ms. Sylvia McNicoll: I feel they have created guidelines and everyone is happy with it but we're not. You know they have decided that a certain percentage is open to them because of fair dealings.

Ms. Ann Ludbrook: Sylvia said that one poem wouldn't be acceptable for students. I think that one poem is a collection of poems. Say you have 100 poems in a collection and you can't share one poem with a student or one newspaper article for a student for their learning. Data shows that the creator sector has a very limited idea of what a fair dealing would be. I remember speaking at a communications conference in 2014 at Wilfrid Laurier. I asked the Access Copyright executive director what she felt was fair dealing. She said it was four pages per student per year. I feel this is not a useful guideline for students.

Mr. Majid Jowhari: You feel there is an oversight....

Ms. Ann Ludbrook: I feel there is fair dealing for education. Fair dealing for private study and research is pretty clear in Canadian law. I think the creator industry is not at all happy about the exception of fair dealing for education, and they would like it to go away. But I think we do....

Mr. Majid Jowhari: What would happen...? I have one last question.

The Chair: Sorry, we're way over time.

We're going to Mr. Jeneroux for five minutes, please.

Mr. Matt Jeneroux: Thank you.

I think we'll get into some of that in my questions. Let's go back to where both of you, Ms. McNicoll and Ms. Ludbrook, wanted to comment. I'll let you have the floor, Ms. McNicoll.

Ms. Sylvia McNicoll: When I said one poem, again, let's go back to the nature of the photocopying. If you have a whole anthology of different poets and you take one poem and consistently photocopy it or download it or whatever you want or post, at worst, and use it consistently every year, obviously the nature of the reproduction is taking away from the income of that poet. I am not saying you can't take a page of my story or a page...it really depends on how you're using it. We would all love to have a really easy formula, but there isn't one. The exemption didn't even try to give a formula, so the colleges created their formulas. So did the K-to-12 sector, and here we are.

Mr. Matt Jeneroux: I want to clarify. Going back, not to Mr. Jowhari's question, but more so on talking about Access Copyright and questions earlier on to Ms. Muller. Ms. Ludbrook, would you like to take a stab at that?

Ms. Ann Ludbrook: Could you say that again?

Mr. Matt Jeneroux: It goes back to my questions to Ms. Muller about opting out of Access Copyright.

Ms. Ann Ludbrook: When I first came to Ryerson, I actually did a course pack study. What we found was that.... For instance, we have a database licence to the *Toronto Star* through seven different databases. We pay the *Toronto Star* directly every year, but we also pay for that content in seven different databases.

Everything is packaged for us. We buy it through ProQuest, the platform. I can give you a list. There's Canadian Newsstand, which is now global. Earlier, we purchased it through CPIQ, ProQuest Global Newsstream, Factiva, LexisNexis, and ProQuest CBCA. Some of them allow us to course-pack the content without paying for it. Some of them allow us to post the full text. We usually just link to material, but we have licences for that content.

What we were doing in the bookstore wasn't checking. We were just paying that licence to Access Copyright for that *Toronto Star* material that we'd already licensed. We started looking at what we were doing in terms of print course packs in a more careful way and started to think, okay, why does the content—

● (1720)

Mr. Matt Jeneroux: When did you start doing that?

Ms. Ann Ludbrook: That was in 2011.

Mr. Matt Jeneroux: That was prior to the act coming in when you started.

Ms. Ann Ludbrook: Yes, and it partially came out of Access Copyright. It was $45 per student originally, and we started to ask if we were actually using that content. What I would say is that what we found in doing E-reserves is that we actually didn't use that much material. Most of what we use in E-reserves is electronic material that we have already licenced. That is what our students, especially at Ryerson.... We're very practical. We have an engineering school. We have a nursing school. We are not heavily into literary material. Most of what we put up in our E-reserve system is not literary. It's scholarly.

Mr. Matt Jeneroux: Okay. You have a checklist, a do-it-yourself copyright checklist. I'm going to ask you to speak on behalf of other universities, but is that standard across the.... Did you guys create that yourselves?

Ms. Ann Ludbrook: We created that ourselves. I did that in consultation with Julia Shin Doi. We created a workflow for professors who didn't want to use our other options. Other options are to print course packs if they want it in print, through an Access Copyright vendor, or to use E-reserves, where we do the copyright checking.

Mr. Matt Jeneroux: Who looks over that? Is that held in your department? There's a checklist, and I guess the instructor checks off the checklist, hands it in to you, and you are satisfied?

Ms. Ann Ludbrook: No, we actually have the E-reserves, so a large portion of our readings at Ryerson actually go through E-reserves, and they're copyright-checked. We're looking at that content.

The do-it-yourself checklist is for faculty who want to follow the rules of fair dealing and using licensed resources. Sometimes what will happen is that they won't know how to do the link, so they send me a syllabus and I do links directly for them, or we just direct them to use E-reserves instead, if they don't know. Some of the faculty do it themselves. They have the option to do that.

The Chair: Thank you.

We'll move to Mr. Sheehan for five minutes.

Mr. Terry Sheehan: Thank you very much for your participation today. I'm from Sault Ste. Marie in northern Ontario. We have a lot of rural first nations in northern Ontario, as well as across this great nation.

One of the questions I'm going to be asking is for Sylvia. In particular, we're interested in the relationship between the Copyright Act and indigenous creators and their works. Do you have any sense from your indigenous members as to how the Copyright Act affects their work or any dealings?

Ms. Sylvia McNicoll: I'm sorry. I do not, specifically to the indigenous authors, but I would say that it probably at this point affects them more, only because we have the year of reconciliation and the schools are looking for more curriculum material. Our indigenous authors are going to schools more and visiting more.

Mr. Terry Sheehan: It is part of the Truth and Reconciliation process, but one of the issues that we've uncovered so far for the first nations community unto itself is that the Copyright Act usually deals with an individual or an individual creator, and the tariffs are paid to that person or individual and whatnot. For the indigenous communities, traditionally they look at a lot of things as a collective, as the particular first nation owning that symbol or that particular story that has been passed down through generations. It's really very difficult to apply the ownership to an individual. It's to the community itself. That's the way they view things.

That's one of our challenges with this Copyright Act. It really doesn't apply in a way that's meaningful for our indigenous people. We're trying to unravel that particular mystery. I don't know if anybody here at this particular table has any comments about indigenous ways or indigenous artists that they've been dealing with.

Ken.

Mr. Ken Thompson: All I would say is that the World Intellectual Property Organization has been studying the issue. It's called traditional knowledge, and the reason it creates somewhat of a legal issue is that traditional knowledge often isn't expressed in a way that can be copied. As you say, it's handed down from generation to generation, and the feeling is that it's owned by the community rather than by an individual. Obviously our act should address that at some point, but I think more importantly that we need an international treaty or understanding of how that would be dealt with. Unfortunately, it's not something that I think we can do on our own.

I would encourage the government to be very involved in traditional knowledge on an international scale.

● (1725)

Mr. Terry Sheehan: That's a good point. We haven't heard that one. That's good.

We have Sault College in Sault Ste. Marie, a very large college, and the libraries unto themselves that are there. It's sort of a technology type thing and you're seeing a lot of technological processes in place. Whether you want to talk about 3-D printing or... a lot of things are happening in the digital world and the technology world.

How are the colleges managing copyright as it relates to those new technologies that are out there?

Ms. Joy Muller: We're all working within the college environment, which contains learning management systems, and libraries are working within those learning management systems themselves. Even though the Ontario community college libraries may have varying systems.... Seneca doesn't, in fact, have the same one as in the Sault. I'm very good friends with the director of libraries in the Sault, Jason Bird, and while we have different systems, we're always working together to find commonalities that we can share through the heads of libraries and learning resources. In fact, Jason and I are in the Ontario Library Association Copyright User Group together because it goes even beyond the colleges. We try to encourage all the users to be compliant and use the fair dealing six factors. We're all trying to work from the same framework and the same guidelines, even though our budgets may vary, the sizes of our libraries may vary, and the sizes of our user communities would vary, as well. We still work very closely together to ensure that we have those technologies that enable our students to get the best education that they can.

Mr. Terry Sheehan: Thank you very much.

The Chair: Thank you very much. For the final two minutes of the day, we have Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you again for your presentations.

Ms. McNicoll, you noted your concerns about your income, but what would your advice be to younger people, with regard to them trying to enter into a situation where they would want to use either artistic or literary creation, as in your particular situation, as a base for lifestyle and contributions?

Ms. Sylvia McNicoll: I've always said you have to cobble together a living. I have never said that you can write one poem and live off of it or one picture book or one novel, but now I say you really can't make a living. I have tried every different way. I've written about shot peening. I turn nothing down. I just find it's not possible anymore.

Mr. Brian Masse: I think even some of the testimony we heard in Halifax was about how people's incomes had been supplemented as part of a repertoire of either work or...but that they had basically dropped by between 50% and 70% or sometimes 90%.

Ms. Sylvia McNicoll: Yes, and in my case, it's 90%.

Mr. Brian Masse: It was partly those things.

I'm going to leave it at that, Mr. Chair.

The Chair: On that note, we have come to the end of another successful panel.

As you can see, the task before us is not an easy one. I'm going to reiterate what we said at the very beginning of this. Let's not assume what the outcome of this will be. We are asking hard questions of everybody, because we know everybody is concerned. Everybody has concerns. One way or the other, there are concerns with this, and the only way to really, truly understand this is to ask the questions that we're asking and then put all of that onto our analysts to figure it out and write a magnificent report, and then we can work on recommendations.

That being said, we are going to adjourn for the day and we will be back at 7:00 for the open-mike portion of this.

Thank you all very much.

The meeting is adjourned.

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